



Reprinted
February 24, 2004

ENGROSSED HOUSE BILL No. 1365

DIGEST OF HB 1365 (Updated February 23, 2004 5:12 pm - DI 44)

Citations Affected: IC 6-1.1; IC 6-2.5; IC 6-3; IC 6-3.1; IC 9-18; IC 9-29; IC 15-7; IC 32-24; noncode.

Synopsis: Various state tax matters. Freezes the assessed value of land classified in the farmland protection program. Upon withdrawal from the classification, requires payment of the property taxes that would have been assessed to the land during the lesser of the period of classification or ten years, plus interest. Requires deposit of the property taxes in the farmland protection program account. Creates the farmland protection program to be administered by the Indiana land resources council. Creates the farmland protection program account. Makes the following changes to the sales and use tax: (1) Grants a credit against Indiana use tax for sales tax paid in another state for a vehicle, a watercraft, or an aircraft. (2) Makes the furnishing of satellite television service, cable radio service, and satellite radio service a retail
(Continued next page)

Effective: January 1, 2004 (retroactive); March 1, 2004 (retroactive); upon passage; April 1, 2004; July 1, 2004; January 1, 2005.

Cochran, Liggett, Kuzman, Espich
(SENATE SPONSORS—BORST, SIMPSON)

January 20, 2004, read first time and referred to Committee on Ways and Means.
January 26, 2004, amended, reported — Do Pass.
February 4, 2004, read second time, amended, ordered engrossed.
February 5, 2004, engrossed. Read third time, made special order of business. Reread third time, recommitted to Committee of One, amended; passed. Yeas 74, nays 19.
February 6, 2004, re-engrossed

SENATE ACTION

February 10, 2004, read first time and referred to Committee on Finance.
February 19, 2004, amended, reported favorably — Do Pass.
February 23, 2004, read second time, amended, ordered engrossed.

EH 1365—LS 7382/DI 51+



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transaction. (3) Indicates that a deduction for sales tax paid on a purchase price that becomes uncollectible is assignable only if the retail merchant that paid the tax assigned the right to the deduction in writing. (4) Requires certain out-of-state entities to collect sales tax in Indiana. (5) Provides that gross retail income does not include receipts attributable to delivery charges or installation charges if those charges are separately stated on the invoice. Revises the manner in which net operating losses are computed. Makes the research expense credit permanent (instead of expiring at the end of 2013). Repeals the sales tax credit for sales of motor vehicles, trailers, watercraft, and aircraft that are sold in Indiana and titled or registered in another state. Eliminates the \$2 annual fee to renew a permanent registration of a semitrailer. Repeals the registration fee for a converter dolly. Repeals the sales tax on complimentary hotel rooms.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1365

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation, agriculture and animals.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-1.1-6.9 IS ADDED TO THE INDIANA CODE
2 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2005]:

4 **Chapter 6.9. Assessment of Classified Farmland**

5 **Sec. 1. As used in this chapter, "farmland" refers to land**
6 **classified in the farmland protection program under IC 15-7-10.**

7 **Sec. 2. As used in this chapter, "recapture period" means the**
8 **lesser of:**

9 (1) the period of classification of land as farmland; or

10 (2) the ten (10) year period immediately preceding the date on
11 which land is withdrawn from the farmland classification.

12 **Sec. 3. As used in this chapter, "taxpayer" refers to the owner**
13 **of farmland.**

14 **Sec. 4. For each assessment date during the period of the**
15 **classification of land as farmland:**

16 (1) the land shall be assessed using the lesser of:

17 (A) the assessed value finally determined for the current

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year's assessment date; or

(B) the assessed value finally determined for the assessment date that next succeeds the date of the farmland classification under IC 15-7-10;

(2) assessing officials shall keep a record of the assessed value that would apply if the land were not classified as farmland;

(3) ditch assessments on the farmland shall be paid; and

(4) oil, gas, stone, coal, or other mineral wealth obtained from the farmland shall be assessed and placed on the tax duplicate.

Sec. 5. The taxpayer shall record the approved application for farmland classification under IC 15-7-10 in the county recorder's office. After an approved application is properly recorded, the county auditor shall enter the farmland for taxation at the assessed value determined under section 4(1) of this chapter.

Sec. 6. If farmland is withdrawn from the farmland classification:

(1) the Indiana land resources council established by IC 15-7-9-4 shall immediately notify the assessor, auditor, and recorder of the county in which the farmland is located that the farmland has been withdrawn; and

(2) the taxpayer shall make a notation of the withdrawal in the records of the county recorder.

Sec. 7. (a) If farmland is withdrawn, other than under IC 15-7-10-11, from the farmland classification, the taxpayer shall pay to the county treasurer an amount equal to the sum of:

(1) the remainder of:

(A) the total property taxes that, if it were not for the farmland classification, would have been assessed to the land during the recapture period; minus

(B) the total property taxes assessed to the farmland during the recapture period that were paid; plus

(2) interest on the property taxes determined under subdivision (1) at the rate of ten percent (10%) per year.

(b) Property taxes shall be determined under subsection (a)(1) using:

(1) the assessed value of the land as recorded under section 4(2) of this chapter; and

(2) the net tax rate for the taxing district in which the farmland is located;

for each year for which the property taxes are determined.

(c) The liability imposed by this section is a lien on the land withdrawn from the farmland classification. The county treasurer

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shall deposit collections under this section in the farmland protection program account established by IC 15-7-10-12. If the liability is not satisfied, the lien is treated in the same manner that delinquent taxes on real property are treated.

Sec. 8. A conveyance of farmland does not release a person acquiring an interest in the land from an obligation or liability imposed under this chapter.

SECTION 2. IC 6-2.5-1-5, AS AMENDED BY P.L.257-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Except as provided in subsection (b), "gross retail income" means the total gross receipts, of any kind or character, received in a retail transaction, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- ~~(4) delivery charges;~~
- ~~(5) installation charges;~~ or
- ~~(6)~~ (4) the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(b) "Gross retail income" does not include that part of the gross receipts attributable to:

- (1) the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser;
- (2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract;
- (3) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;
- (4) interest, financing, and carrying charges from credit extended on the sale of personal property if the amount is separately stated on the invoice, bill of sale, or similar document given to the

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purchaser; ~~or~~

(5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(6) delivery charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(7) installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

For purposes of subdivision (6), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing.

(c) A public utility's or a power subsidiary's gross retail income includes all gross retail income received by the public utility or power subsidiary, including any minimum charge, flat charge, membership fee, or any other form of charge or billing.

SECTION 3. IC 6-2.5-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. For purposes of this chapter:

(a) "Use" means the exercise of any right or power of ownership over tangible personal property.

(b) "Storage" means the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana.

(c) "A retail merchant engaged in business in Indiana" includes any retail merchant who makes retail transactions in which a person acquires personal property **or services** for use, storage, or consumption in Indiana and who: ~~maintains:~~

(1) **maintains** an office, place of distribution, sales location, sample location, warehouse, storage place, or other place of business which is located in Indiana and which the retail merchant maintains, occupies, or uses, either permanently or temporarily, either directly or indirectly, and either by ~~himself~~ **the retail merchant** or through ~~an~~ **a representative**, agent, or subsidiary; ~~or~~

(2) **maintains** a representative, agent, salesman, canvasser, or solicitor who, while operating in Indiana under the authority of and on behalf of the retail merchant or a subsidiary of the retail merchant, sells, delivers, **installs, repairs, assembles, sets up, accepts returns of, bills, invoices,** or takes orders for sales of

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tangible personal property **or services** to be used, stored, or consumed in Indiana;

(3) is otherwise required to register as a retail merchant under IC 6-2.5-8-1; or

(4) may be required by the state to collect tax under this article to the extent allowed under the Constitution of the United States and federal law.

(d) Notwithstanding any other provision of this section, tangible or intangible property that is:

(1) owned or leased by a person that has contracted with a commercial printer for printing; and

(2) located at the premises of the commercial printer;

shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person. A commercial printer with which a person has contracted for printing shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person.

SECTION 4. IC 6-2.5-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. ~~(a)~~ A person is entitled to a credit against the use tax imposed on the use, storage, or consumption of a particular item of tangible personal property equal to the amount, if any, of sales tax, purchase tax, or use tax paid to another state, territory, or possession of the United States for the acquisition of that property.

~~(b) The credit provided under subsection (a) does not apply to the use tax imposed on the use, storage, or consumption of vehicles, watercraft, or aircraft that are required to be titled, registered, or licensed by Indiana.~~

SECTION 5. IC 6-2.5-4-1, AS AMENDED BY P.L.257-2003, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

(1) acquires tangible personal property for the purpose of resale; and

(2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

(1) the property is transferred in the same form as when it was

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1 acquired;

2 (2) the property is transferred alone or in conjunction with other
3 property or services; or

4 (3) the property is transferred conditionally or otherwise.

5 (d) Notwithstanding subsection (b), a person is not selling at retail
6 if he is making a wholesale sale as described in section 2 of this
7 chapter.

8 (e) The gross retail income received from selling at retail is only
9 taxable under this article to the extent that the income represents:

10 (1) the price of the property transferred, without the rendition of
11 any service; and

12 (2) except as provided in subsection (g), any bona fide charges
13 which are made for preparation, fabrication, alteration,
14 modification, finishing, completion, ~~delivery~~, or other service
15 performed in respect to the property transferred before its transfer
16 and which are separately stated on the transferor's records.

17 For purposes of subdivision (2), ~~charges for delivery are charges by the~~
18 ~~seller for preparation and delivery of the property to a location~~
19 ~~designated by the purchaser of property, including but not limited to~~
20 ~~transportation, shipping, postage, handling, crating, and packing.~~
21 **transfer shall take place before delivery of the property to the**
22 **purchaser.**

23 (f) Notwithstanding subsection (e):

24 (1) in the case of retail sales of gasoline (as defined in
25 IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22), the
26 gross retail income received from selling at retail is the total sales
27 price of the gasoline or special fuel minus the part of that price
28 attributable to tax imposed under IC 6-6-1.1, IC 6-6-2.5, or
29 Section 4041(a) or Section 4081 of the Internal Revenue Code;
30 and

31 (2) in the case of retail sales of cigarettes (as defined in
32 IC 6-7-1-2), the gross retail income received from selling at retail
33 is the total sales price of the cigarettes including the tax imposed
34 under IC 6-7-1.

35 (g) Gross retail income does not include income that represents
36 charges for serving or delivering food and food ingredients furnished,
37 prepared, or served for consumption at a location, or on equipment,
38 provided by the retail merchant. However, the exclusion under this
39 subsection only applies if the charges for the serving or delivery are
40 stated separately from the price of the food and food ingredients when
41 the purchaser pays the charges.

42 SECTION 6. IC 6-2.5-4-11 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE MARCH 1, 2004 (RETROACTIVE)]: Sec. 11. (a) A person is a retail merchant making a retail transaction when ~~he the person~~ furnishes ~~local~~ cable television **or radio** service or ~~intrastate cable satellite~~ television **or radio** service **that terminates in Indiana.**

(b) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of ~~local~~ cable television **or radio** service or ~~intrastate cable satellite~~ **or radio** television service.

SECTION 7. IC 6-2.5-6-9, AS AMENDED BY P.L.257-2003, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) In determining the amount of state gross retail and use taxes which ~~he a retail merchant~~ must remit under section 7 of this chapter, ~~a the~~ retail merchant shall, subject to ~~subsection~~ **subsections (c) and (d)**, deduct from ~~his the retail merchant's~~ gross retail income from retail transactions made during a particular reporting period, an amount equal to ~~his the retail merchant's~~ receivables which:

- (1) resulted from retail transactions in which the retail merchant did not collect the state gross retail or use tax from the purchaser;
- (2) resulted from retail transactions on which the retail merchant has previously paid the state gross retail or use tax liability to the department; and
- (3) were written off as an uncollectible debt for federal tax purposes under Section 166 of the Internal Revenue Code during the particular reporting period.

(b) If a retail merchant deducts a receivable under subsection (a) and subsequently collects all or part of that receivable, then the retail merchant shall, subject to subsection ~~(c)(6)~~, **(d)(6)**, include the amount collected as part of ~~his the retail merchant's~~ gross retail income from retail transactions for the particular reporting period in which ~~he the retail merchant~~ makes the collection.

(c) **This subsection applies only to retail transactions occurring after June 30, 2004. The right to a deduction under this section is assignable only if the retail merchant that paid the state gross retail or use tax liability assigned the right to the deduction in writing.**

(d) The following provisions apply to a deduction for a receivable treated as uncollectible debt under subsection (a):

- (1) The deduction does not include interest.
- (2) The amount of the deduction shall be determined in the

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manner provided by Section 166 of the Internal Revenue Code for bad debts but shall be adjusted to exclude:

- (A) financing charges or interest;
- (B) sales or use taxes charged on the purchase price;
- (C) uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid;
- (D) expenses incurred in attempting to collect any debt; and
- (E) repossessed property.

(3) The deduction shall be claimed on the return for the period during which the receivable is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subdivision, a claimant who is not required to file federal income tax returns may deduct an uncollectible receivable on a return filed for the period in which the receivable is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant were required to file a federal income tax return.

(4) If the amount of uncollectible receivables claimed as a deduction by a retail merchant for a particular reporting period exceeds the amount of the retail merchant's taxable sales for that reporting period, the retail merchant may file a refund claim under IC 6-8.1-9. However, the deadline for **the** refund claim shall be measured from the due date of the return for the reporting period on which the deduction for the uncollectible receivables could first be claimed.

(5) If a retail merchant's filing responsibilities have been assumed by a certified service provider (as defined in IC 6-2.5-11-2), the certified service provider may claim, on behalf of the retail merchant, any deduction or refund for uncollectible receivables provided by this section. The certified service provider must credit or refund the full amount of any deduction or refund received to the retail merchant.

(6) For purposes of reporting a payment received on a previously claimed uncollectible receivable, any payments made on a debt or account shall be applied first proportionally to the taxable price of the property and the state gross retail tax or use tax thereon, and secondly to interest, service charges, and any other charges.

(7) A retail merchant claiming a deduction for an uncollectible receivable may allocate that receivable among the states that are members of the streamlined sales and use tax agreement if the books and records of the retail merchant support that allocation.

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SECTION 8. IC 6-2.5-8-10, AS AMENDED BY P.L.254-2003,
SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2004]: Sec. 10. (a) A person that:

- (1) makes retail transactions from outside Indiana to a destination in Indiana;
- (2) does not maintain a place of business in Indiana; and
- (3) either:
 - (A) engages in the regular or systematic soliciting of retail transactions from potential customers in Indiana;
 - (B) enters into a contract to provide property or services to an agency (as defined in IC 4-13-2-1) or ~~an~~ **a state educational institution of higher education** (as defined in IC 20-12-0.5-1); ~~or~~
 - (C) agrees to sell property or services to an agency (as defined in IC 4-13-2-1) or ~~an~~ **a state educational institution of higher education** (as defined in IC 20-12-0.5-1); ~~or~~
 - (D) is closely related to another person that maintains a place of business in Indiana or is described in clause (A), (B), or (C);**

shall file an application for a retail merchant's certificate under this chapter and collect and remit tax as provided in this article. Conduct described in subdivision (3)(B) and (3)(C) occurring after June 30, 2003, constitutes consent to be treated under this article as if the person has a place of business in Indiana or is engaging in conduct described in subdivision (3)(A), including the provisions of this article that require a person to collect and remit tax under this article.

(b) A person is rebuttably presumed to be engaging in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person does any of the following:

- (1) Distributes catalogs, periodicals, advertising flyers, or other written solicitations of business to potential customers in Indiana, regardless of whether the distribution is by mail or otherwise and without regard to the place from which the distribution originated or in which the materials were prepared.
- (2) Displays advertisements on billboards or displays other outdoor advertisements in Indiana.
- (3) Advertises in newspapers published in Indiana.
- (4) Advertises in trade journals or other periodicals that circulate primarily in Indiana.
- (5) Advertises in Indiana editions of a national or regional publication or a limited regional edition in which Indiana is included as part of a broader regional or national publication if

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the advertisements are not placed in other geographically defined editions of the same issue of the same publication.

(6) Advertises in editions of regional or national publications that are not by the contents of the editions geographically targeted to Indiana but that are sold over the counter in Indiana or by subscription to Indiana residents.

(7) Broadcasts on a radio or television station located in Indiana.

(8) Makes any other solicitation by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

(c) A person not maintaining a place of business in Indiana is considered to be engaged in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person engages in any of the activities described in subsection (b) and:

(1) makes at least one hundred (100) retail transactions from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months; or

(2) makes at least ten (10) retail transactions totaling more than one hundred thousand dollars (\$100,000) from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months.

(d) **Subject to subsection (e)**, the location in or outside Indiana of vendors that:

(1) are independent of a person that is soliciting customers in Indiana; and

(2) provide products or services to the person in connection with the person's solicitation of customers in Indiana:

(A) including products and services such as creation of copy, printing, distribution, and recording; but

(B) excluding:

(i) delivery of goods;

(ii) billing or invoicing for the sale of goods;

(iii) providing repairs of goods;

(iv) assembling or setting up goods for use by the purchaser; or

(v) accepting returns of unwanted or damaged goods;

is not to be taken into account in the determination of whether the person is required to collect use tax under this section.

(e) Subsection (d) does not apply if the person soliciting orders is closely related to the vendor.

(f) For purposes of subsections (a) and (e), a person is closely related to another person if:

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(1) the two (2) persons:

(A) use an identical or a substantially similar name, trademark, or good will to develop, promote, or maintain sales;

(B) pay for each other's services in whole or in part contingent on the volume or value of sales; or

(C) share a common business plan or substantially coordinate their business plans; and

(2) either:

(A) one (1) or both of the persons are corporations and:

(i) one (1) person; and

(ii) any other person related to the person in a manner that would require an attribution of stock from the corporation to the person or from the person to the corporation under the attribution rules of Section 318 of the Internal Revenue Code;

own directly, indirectly, beneficially, or constructively at least fifty percent (50%) of the value of the corporation's outstanding stock;

(B) both entities are corporations and an individual stockholder and the members of the stockholder's family (as defined in Section 318 of the Internal Revenue Code) own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the value of both entities' outstanding stock; or

(C) one (1) or both persons are limited liability companies, partnerships, limited liability partnerships, estates, or trusts, and their members, partners, or beneficiaries own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the profits, capital, stock, or value of one (1) or both persons.

SECTION 9. IC 6-3-1-3.5, AS AMENDED BY P.L.1-2004, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 3.5. When used in this article, the term "adjusted gross income" shall mean the following:

(a) In the case of all individuals, "adjusted gross income" (as defined in Section 62 of the Internal Revenue Code), modified as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 62 of the Internal Revenue Code

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for taxes based on or measured by income and levied at the state level by any state of the United States.

(3) Subtract one thousand dollars (\$1,000), or in the case of a joint return filed by a husband and wife, subtract for each spouse one thousand dollars (\$1,000).

(4) Subtract one thousand dollars (\$1,000) for:

(A) each of the exemptions provided by Section 151(c) of the Internal Revenue Code;

(B) each additional amount allowable under Section 63(f) of the Internal Revenue Code; and

(C) the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(5) Subtract:

(A) one thousand five hundred dollars (\$1,500) for each of the exemptions allowed under Section 151(c)(1)(B) of the Internal Revenue Code for taxable years beginning after December 31, 1996; and

(B) five hundred dollars (\$500) for each additional amount allowable under Section 63(f)(1) of the Internal Revenue Code if the adjusted gross income of the taxpayer, or the taxpayer and the taxpayer's spouse in the case of a joint return, is less than forty thousand dollars (\$40,000).

This amount is in addition to the amount subtracted under subdivision (4).

(6) Subtract an amount equal to the lesser of:

(A) that part of the individual's adjusted gross income (as defined in Section 62 of the Internal Revenue Code) for that taxable year that is subject to a tax that is imposed by a political subdivision of another state and that is imposed on or measured by income; or

(B) two thousand dollars (\$2,000).

(7) Add an amount equal to the total capital gain portion of a lump sum distribution (as defined in Section 402(e)(4)(D) of the Internal Revenue Code) if the lump sum distribution is received by the individual during the taxable year and if the capital gain portion of the distribution is taxed in the manner provided in Section 402 of the Internal Revenue Code.

(8) Subtract any amounts included in federal adjusted gross income under Section 111 of the Internal Revenue Code as a recovery of items previously deducted as an itemized deduction

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from adjusted gross income.

(9) Subtract any amounts included in federal adjusted gross income under the Internal Revenue Code which amounts were received by the individual as supplemental railroad retirement annuities under 45 U.S.C. 231 and which are not deductible under subdivision (1).

(10) Add an amount equal to the deduction allowed under Section 221 of the Internal Revenue Code for married couples filing joint returns if the taxable year began before January 1, 1987.

(11) Add an amount equal to the interest excluded from federal gross income by the individual for the taxable year under Section 128 of the Internal Revenue Code if the taxable year began before January 1, 1985.

(12) Subtract an amount equal to the amount of federal Social Security and Railroad Retirement benefits included in a taxpayer's federal gross income by Section 86 of the Internal Revenue Code.

(13) In the case of a nonresident taxpayer or a resident taxpayer residing in Indiana for a period of less than the taxpayer's entire taxable year, the total amount of the deductions allowed pursuant to subdivisions (3), (4), (5), and (6) shall be reduced to an amount which bears the same ratio to the total as the taxpayer's income taxable in Indiana bears to the taxpayer's total income.

(14) In the case of an individual who is a recipient of assistance under IC 12-10-6-1, IC 12-10-6-2.1, IC 12-15-2-2, or IC 12-15-7, subtract an amount equal to that portion of the individual's adjusted gross income with respect to which the individual is not allowed under federal law to retain an amount to pay state and local income taxes.

(15) In the case of an eligible individual, subtract the amount of a Holocaust victim's settlement payment included in the individual's federal adjusted gross income.

(16) For taxable years beginning after December 31, 1999, subtract an amount equal to the portion of any premiums paid during the taxable year by the taxpayer for a qualified long term care policy (as defined in IC 12-15-39.6-5) for the taxpayer or the taxpayer's spouse, or both.

(17) Subtract an amount equal to the lesser of:

(A) for a taxable year:

(i) including any part of 2004, the amount determined under subsection (f); and

(ii) beginning after December 31, 2004, two thousand five hundred dollars (\$2,500); or

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(B) the amount of property taxes that are paid during the taxable year in Indiana by the individual on the individual's principal place of residence.

(18) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the individual's federal adjusted gross income.

(19) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(20) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(b) In the case of corporations, the same as "taxable income" (as defined in Section 63 of the Internal Revenue Code) adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 170 of the Internal Revenue Code.

(3) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

(4) Subtract an amount equal to the amount included in the corporation's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(c) In the case of life insurance companies (as defined in Section

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816(a) of the Internal Revenue Code) that are organized under Indiana law, the same as "life insurance company taxable income" (as defined in Section 801 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 or Section 810 of the Internal Revenue Code.

(d) In the case of insurance companies subject to tax under Section 831 of the Internal Revenue Code and organized under Indiana law, the same as "taxable income" (as defined in Section 832 of the Internal Revenue Code), adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Add an amount equal to any deduction allowed or allowable under Section 170 of the Internal Revenue Code.

(3) Add an amount equal to a deduction allowed or allowable under Section 805 or Section 831(c) of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state.

(4) Subtract an amount equal to the amount included in the company's taxable income under Section 78 of the Internal Revenue Code.

(5) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an

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earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(6) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(e) In the case of trusts and estates, "taxable income" (as defined for trusts and estates in Section 641(b) of the Internal Revenue Code) adjusted as follows:

(1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.

(2) Subtract an amount equal to the amount of a September 11 terrorist attack settlement payment included in the federal adjusted gross income of the estate of a victim of the September 11 terrorist attack or a trust to the extent the trust benefits a victim of the September 11 terrorist attack.

(3) Add or subtract the amount necessary to make the adjusted gross income of any taxpayer that owns property for which bonus depreciation was allowed in the current taxable year or in an earlier taxable year equal to the amount of adjusted gross income that would have been computed had an election not been made under Section 168(k)(2)(C)(iii) of the Internal Revenue Code to apply bonus depreciation to the property in the year that it was placed in service.

(4) Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.

(f) This subsection applies only to the extent that an individual paid property taxes in 2004 that were imposed for the March 1, 2002, assessment date or the January 15, 2003, assessment date. The maximum amount of the deduction under subsection (a)(17) is equal to the amount determined under STEP FIVE of the following formula:

STEP ONE: Determine the amount of property taxes that the taxpayer paid after December 31, 2003, in the taxable year for property taxes imposed for the March 1, 2002, assessment date and the January 15, 2003, assessment date.

STEP TWO: Determine the amount of property taxes that the taxpayer paid in the taxable year for the March 1, 2003, assessment date and the January 15, 2004, assessment date.

STEP THREE: Determine the result of the STEP ONE amount divided by the STEP TWO amount.

STEP FOUR: Multiply the STEP THREE amount by two

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thousand five hundred dollars (\$2,500).

STEP FIVE: Determine the sum of the STEP THREE amount and two thousand five hundred dollars (\$2,500).

SECTION 10. IC 6-3-2-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]:

Sec. 2.5. (a) This section applies to a resident person. ~~for a particular taxable year, if the taxpayer's adjusted gross income for that taxable year is reduced because of a deduction allowed under Section 172 of the Internal Revenue Code for a net operating loss. For purposes of section 1 of this chapter, the taxpayer's adjusted gross income, for the particular taxable year, is the remainder determined under STEP FOUR of the following formula:~~

STEP ONE: Determine the taxpayer's adjusted gross income, for the taxable year, as calculated without the deduction for net operating losses provided by Section 172 of the Internal Revenue Code.

STEP TWO: Determine, in the manner prescribed in subsection (b), the amount of the taxpayer's net operating losses that are deductible for the taxable year under Section 172 of the Internal Revenue Code, as adjusted to reflect the modifications required by IC 6-3-1-3.5.

STEP THREE: Enter the larger of zero (0) or the amount determined under STEP TWO.

STEP FOUR: Subtract the amount entered under STEP THREE from the amount determined under STEP ONE.

(b) For purposes of STEP TWO of subsection (a), the modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year during which each net operating loss was incurred. In addition, for purposes of STEP TWO of subsection (a), the following procedures apply:

(1) The taxpayer's net operating loss for a particular taxable year shall be treated as a positive number.

(2) A modification that is to be added to federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a negative number.

(3) A modification that is to be subtracted from federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a positive number.

(b) Resident persons are entitled to a net operating loss deduction. The amount of the deduction taken in a taxable year may not exceed the taxpayer's unused Indiana net operating losses carried back or carried over to that year.

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(c) An Indiana net operating loss equals the taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, adjusted for the modifications required by IC 6-3-1-3.5.

(d) The following provisions apply for purposes of subsection (c):

(1) The modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year in which each net operating loss was incurred.

(2) An Indiana net operating loss includes a net operating loss that arises when the modifications required by IC 6-3-1-3.5 exceed the taxpayer's federal taxable income (as defined in Section 62 of the Internal Revenue Code) for the taxable year in which the Indiana net operating loss is determined.

(e) Subject to the limitations contained in subsection (g), an Indiana net operating loss carryback or carryover shall be available as a deduction from the taxpayer's adjusted gross income (as defined in IC 6-3-1-3.5) in the carryback or carryover year provided in subsection (f).

(f) Carrybacks and carryovers shall be determined under this subsection as follows:

(1) An Indiana net operating loss shall be an Indiana net operating loss carryback to each of the carryback years preceding the taxable year of the loss.

(2) An Indiana net operating loss shall be an Indiana net operating loss carryover to each of the carryover years following the taxable year of the loss.

(3) Carryback years shall be determined by reference to the number of years allowed for carrying back a net operating loss under Section 172(b) of the Internal Revenue Code.

(4) Carryover years shall be determined by reference to the number of years allowed for carrying over net operating losses under Section 172(b) of the Internal Revenue Code.

(5) A taxpayer who makes an election under Section 172(b)(3) of the Internal Revenue Code to relinquish the carryback period with respect to a net operating loss for any taxable year shall be considered to have also relinquished the carryback of the Indiana net operating loss for purposes of this section.

(g) The entire amount of the Indiana net operating loss for any taxable year shall be carried to the earliest of the taxable years to which (as determined under subsection (f)) the loss may be carried.

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The amount of the Indiana net operating loss remaining after the deduction is taken under this section in a taxable year may be carried back or carried over as provided in subsection (f). The amount of the Indiana net operating loss carried back or carried over from year to year shall be reduced to the extent that the Indiana net operating loss carryback or carryover is used by the taxpayer to obtain a deduction in a taxable year until the occurrence of the earlier of the following:

(1) The entire amount of the Indiana net operating loss has been used as a deduction.

(2) The Indiana net operating loss has been carried over to each of the carryover years provided by subsection (f).

SECTION 11. IC 6-3-2-2.6, AS AMENDED BY P.L.192-2002(ss), SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2.6. (a) This section applies to a corporation or a nonresident person. for a particular taxable year, if the taxpayer's adjusted gross income for that taxable year is reduced because of a deduction allowed under Section 172 of the Internal Revenue Code for a net operating loss. For purposes of section 1 of this chapter, the taxpayer's adjusted gross income, for the particular taxable year, derived from sources within Indiana is the remainder determined under STEP FOUR of the following formula:

STEP ONE: Determine, in the manner prescribed in section 2 of this chapter, the taxpayer's adjusted gross income, for the taxable year, derived from sources within Indiana, as calculated without the deduction for net operating losses provided by Section 172 of the Internal Revenue Code.

STEP TWO: Determine, in the manner prescribed in subsection (b), the amount of the taxpayer's net operating losses that are deductible for the taxable year under Section 172 of the Internal Revenue Code, as adjusted to reflect the modifications required by IC 6-3-1-3.5, and that are derived from sources within Indiana.

STEP THREE: Enter the larger of zero (0) or the amount determined under STEP TWO.

STEP FOUR: Subtract the amount entered under STEP THREE from the amount determined under STEP ONE.

(b) For purposes of STEP TWO of subsection (a), the modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year during which each net operating loss was incurred. In addition, for purposes of STEP TWO of subsection (a), the amount of a taxpayer's net operating losses that are derived from sources within Indiana shall be determined in the same

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manner that the amount of the taxpayer's income derived from sources within Indiana is determined; under section 2 of this chapter; for the same taxable year during which each loss was incurred. Also; for purposes of STEP TWO of subsection (a); the following procedures apply:

(1) The taxpayer's net operating loss for a particular taxable year shall be treated as a positive number.

(2) A modification that is to be added to federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a negative number.

(3) A modification that is to be subtracted from federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a positive number.

(4) A net operating loss under this section shall be considered even though in the year the taxpayer incurred the loss the taxpayer was not subject to the tax imposed under section 1 of this chapter because the taxpayer was:

(A) a life insurance company (as defined in Section 816(a) of the Internal Revenue Code); or

(B) an insurance company subject to tax under Section 831 of the Internal Revenue Code.

(b) Corporations and nonresident persons are entitled to a net operating loss deduction. The amount of the deduction taken in a taxable year may not exceed the taxpayer's unused Indiana net operating losses carried back or carried over to that year.

(c) An Indiana net operating loss equals the taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, derived from sources within Indiana and adjusted for the modifications required by IC 6-3-1-3.5.

(d) The following provisions apply for purposes of subsection (c):

(1) The modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year in which each net operating loss was incurred.

(2) The amount of the taxpayer's net operating loss that is derived from sources within Indiana shall be determined in the same manner that the amount of the taxpayer's adjusted income derived from sources within Indiana is determined under section 2 of this chapter for the same taxable year during which each loss was incurred.

(3) An Indiana net operating loss includes a net operating loss

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that arises when the modifications required by IC 6-3-1-3.5 exceed the taxpayer's federal taxable income (as defined in Section 63 of the Internal Revenue Code), if the taxpayer is a corporation, or when the modifications required by IC 6-3-1-3.5 exceed the taxpayer's federal adjusted gross income (as defined by Section 62 of the Internal Revenue Code), if the taxpayer is a nonresident person, for the taxable year in which the Indiana net operating loss is determined.

(e) Subject to the limitations contained in subsection (g), an Indiana net operating loss carryback or carryover shall be available as a deduction from the taxpayer's adjusted gross income derived from sources within Indiana (as defined in section 2 of this chapter) in the carryback or carryover year provided in subsection (f).

(f) Carrybacks and carryovers shall be determined under this subsection as follows:

(1) An Indiana net operating loss shall be an Indiana net operating loss carryback to each of the carryback years preceding the taxable year of the loss.

(2) An Indiana net operating loss shall be an Indiana net operating loss carryover to each of the carryover years following the taxable year of the loss.

(3) Carryback years shall be determined by reference to the number of years allowed for carrying back a net operating loss under Section 172(b) of the Internal Revenue Code.

(4) Carryover years shall be determined by reference to the number of years allowed for carrying over net operating losses under Section 172(b) of the Internal Revenue Code.

(5) A taxpayer who makes an election under Section 172(b)(3) of the Internal Revenue Code to relinquish the carryback period with respect to a net operating loss for any taxable year shall be considered to have also relinquished the carryback of the Indiana net operating loss for purposes of this section.

(g) The entire amount of the Indiana net operating loss for any taxable year shall be carried to the earliest of the taxable years to which (as determined under subsection (f)) the loss may be carried. The amount of the Indiana net operating loss remaining after the deduction is taken under this section in a taxable year may be carried back or carried over as provided in subsection (f). The amount of the Indiana net operating loss carried back or carried over from year to year shall be reduced to the extent that the

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1 Indiana net operating loss carryback or carryover is used by the
2 taxpayer to obtain a deduction in a taxable year until the
3 occurrence of the earlier of the following:

4 (1) The entire amount of the Indiana net operating loss has
5 been used as a deduction.

6 (2) The Indiana net operating loss has been carried over to
7 each of the carryover years provided by subsection (f).

8 (h) An Indiana net operating loss deduction determined under
9 this section shall be allowed notwithstanding the fact that in the
10 year the taxpayer incurred the net operating loss the taxpayer was
11 not subject to the tax imposed under section 1 of this chapter
12 because the taxpayer was:

13 (1) a life insurance company (as defined in Section 816(a) of
14 the Internal Revenue Code); or

15 (2) an insurance company subject to tax under Section 831 of
16 the Internal Revenue Code.

17 (i) In the case of a life insurance company that claims an
18 operations loss deduction under Section 810 of the Internal
19 Revenue Code, this section shall be applied by:

20 (1) substituting the corresponding provisions of Section 810 of
21 the Internal Revenue Code in place of references to Section
22 172 of the Internal Revenue; and

23 (2) substituting life insurance company taxable income (as
24 defined in Section 801 the Internal Revenue Code) in place of
25 references to taxable income (as defined in Section 63 of the
26 Internal Revenue Code).

27 (j) For purposes of an amended return filed to carry back an
28 Indiana net operating loss:

29 (1) the term "due date of the return" as used in
30 IC 6-8.1-9-1(a)(1) means the due date of the return for the
31 taxable year in which the net operating loss was incurred; and

32 (2) the term "date the payment was due" as used in
33 IC 6-8.1-9-2(c) means the due date of the return for the
34 taxable year in which the net operating loss was incurred.

35 SECTION 12. IC 6-3.1-4-6, AS AMENDED BY P.L.224-2003,
36 SECTION 191, IS AMENDED TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2004]: Sec. 6. ~~Notwithstanding the other~~
38 ~~provisions of this chapter, a taxpayer is not entitled to a credit for~~
39 ~~Indiana qualified research expense incurred after December 31, 2013.~~
40 ~~Notwithstanding Section 41 of the Internal Revenue Code, the~~
41 ~~termination date in Section 41(h) of the Internal Revenue Code does~~
42 ~~not apply to a taxpayer who is eligible for the credit under this chapter~~

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for the taxable year in which the Indiana qualified research expense is incurred.

SECTION 13. IC 9-29-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. The registration fee for each semitrailer to be used with a tractor licensed under this section is as follows:

- (1) Thirty dollars (\$30) for a one (1) year registration.
- (2) Sixty dollars (\$60) for a five (5) year registration. However, the five (5) year registration fee shall be reduced by twelve dollars (\$12) for each full year after the initial year of the five (5) year period provided in IC 9-18. However, the reduced fee may not be less than the registration fee for a one (1) year registration.

(3) For a permanent registration, the fee is as follows:

~~(A) sixty-five dollars (\$65). at the time the semitrailer is first registered.~~

~~(B) Two dollars (\$2) annually to renew the registration.~~

SECTION 14. IC 15-7-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 10. Farmland Protection Program

Sec. 1. As used in this chapter, "assistant commissioner" refers to the assistant commissioner of agriculture appointed under IC 4-4-22-20.

Sec. 2. As used in this chapter, "council" refers to the Indiana land resources council established by IC 15-7-9-4.

Sec. 3. As used in this chapter, "designated area" refers to an area of land set aside under section 8(c) of this chapter in a county within which land may be designated as farmland eligible for the program.

Sec. 4. As used in this chapter, "farmland" includes the following:

(1) Acreage used for the production of:

- (A) food;**
- (B) feed;**
- (C) forage;**
- (D) fibre; and**
- (E) oilseed crops.**

(2) Acreage used to raise:

- (A) livestock;**
- (B) dairy animals;**
- (C) dairy products;**
- (D) poultry;**

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- 1 (E) poultry products; and
 2 (F) furbearing animals.
 3 (3) Acreage used to:
 4 (A) grow horticultural and nursery stock;
 5 (B) grow fruits;
 6 (C) grow vegetables;
 7 (D) grow forage;
 8 (E) grow timber;
 9 (F) grow trees;
 10 (G) raise fish and other aquaculture products;
 11 (H) raise bees and apiary products; and
 12 (I) grow other crops used for agricultural income.
 13 (4) Areas including;
 14 (A) buildings;
 15 (B) land modifications;
 16 (C) wetlands;
 17 (D) pasture;
 18 (E) forest land;
 19 (F) wildlife land;
 20 (G) riparian areas;
 21 (H) buffers; and
 22 (I) other areas;
 23 that enhance or depend on the inherent productivity of the
 24 land.
 25 Sec. 5. As used in this chapter, "livestock" has the meaning set
 26 forth in IC 4-4-3.2-1(b).
 27 Sec. 6. As used in this chapter, "program" refers to the
 28 farmland protection program established by section 7 of this
 29 chapter.
 30 Sec. 7. The farmland protection program is established to
 31 provide a voluntary tool to Indiana landowners to protect and
 32 conserve rural lands, including the following:
 33 (1) Farmland.
 34 (2) Other rural natural areas as defined by the council.
 35 Sec. 8. (a) The council shall administer the program. The council
 36 shall work with local agencies and organizations to establish a
 37 cooperative relationship in land use practices and policies. The
 38 council, after consulting with local agencies and organizations,
 39 shall develop specific program guidelines and policies to administer
 40 the program. The program must be compatible with the federal
 41 Farm and Ranch Land Protection Program (7 CFR 1491).
 42 (b) The council may adopt rules under IC 4-22-2 to implement

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the program.

(c) The council, working with local agencies and organizations, shall establish criteria for designated areas of land on a county by county basis. Only land within a designated area is eligible for the program. Before establishing an area as a designated area, the council shall hold a hearing in the county in which the land is located. The council shall follow the procedures for public hearings under IC 5-14-1.5-5. The council shall obtain the approval of the local zoning authority having jurisdiction over the designated area, or, if the designated area does not lie within the jurisdiction of any local zoning authority, the county commissioners of the county in which the designated area is located, before designating an area as a designated area for purposes of this chapter.

(d) The council shall establish criteria for evaluating applications for the program, including the following:

(1) Land must have been in an agriculture production or conservation program at the time of application and for five (5) years before the application.

(2) Land must be in a designated area.

(3) Land in:

(A) a locally recognized agricultural district;

(B) an agricultural protection zone;

(C) an agricultural security area; or

(D) any effective local agricultural protection initiative; shall be given higher consideration.

(4) At least thirty-five (35) acres of working land must be located within an agricultural area, with not more than one (1) residence on a single or combined tract to meet acreage requirements with either single or multiple owners.

(5) Larger tracts must be given priority.

(6) A scoring system similar to the federal Farm and Ranch Land Protection Program (7 CFR 1491) shall be developed. There shall be a minimum score requirement to qualify for the program, including standards on:

(A) soil erosion;

(B) conservation plans with the federal Natural Resources Conservation Service's quality criteria;

(C) landowner participation; and

(D) management plans.

(e) A consistent lack of compliance with environmental permits and requirements shall disqualify a landowner from the program.

(f) Applications must be received by the council by January 1 of

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each year, beginning January 1, 2005. Contracts must be entered into by March 1 of each year, beginning March 1, 2005.

(g) The council may reject an application for the program if the council finds that the parcel proposed for protection was divided from a larger parcel in a transaction intended to defeat the purposes of the program.

Sec. 9. (a) A landowner may enroll in the program by entering into a contract with the council for a period of ten (10) years, with an unlimited number of automatic renewal periods of five (5) years each. A landowner may give notice to the state of the landowner's intention to terminate the contract at the end of the contract period. If a landowner is going to terminate the contract, the landowner must give six (6) months advance notice before the expiration date of the contract.

(b) Contract conditions run with the land and must be recorded.

(c) During the term of the contract, one (1) residential building lot may be split from the root parcel (which includes all contiguous property under substantially common ownership at the time of enrollment in the program) if the residential building lot is used for the residence of an individual who is farming the land.

(d) A split may not be made from the root parcel for manufacturing, industrial, or commercial lots unless the split is in keeping with the purpose, principles, and objectives of the program.

Sec. 10. When a county government, local planning commission, or other local entity engaged in planning for a local community has developed standards for the preservation of farmland, the council shall consider the standards when evaluating applications.

Sec. 11. (a) A landowner may withdraw from the program when proposing to enroll in an alternate land protection program of equal or greater time period and conditions.

(b) An early withdrawal, except under subsection (a), from the contract shall result in the loss of and pay back of any incentive received from the program.

(c) Any violation of the contract shall disqualify the farmland or the landowner from enrolling in the program for ten (10) years after the time of confirmation of the violation.

Sec. 12. (a) The farmland protection program account is established within the state general fund for the purpose of providing money to match federal funds under 7 CFR 1491 to be used for the protection of farmland in Indiana. The account shall be administered by the council.

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(b) The account consists of:

- (1) money collected under IC 6-1.1-6.9-7;
- (2) gifts and bequests; and
- (3) grants.

(c) The expenses of administering the account shall be paid from money in the account.

(d) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.

(e) Money in the account at the end of a state fiscal year does not revert to the state general fund.

(f) Money in the account may be spent only after appropriation by the general assembly.

Sec. 13. Owners of land in the program shall be given priority for state grants or technical assistance given by the commissioner of agriculture or the department of commerce.

SECTION 15. IC 32-24-1-5.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 5.4. (a) For purposes of this section, "protected farmland" means land that is:**

- (1) included in an area designated as protected by the Indiana land resources council under IC 15-7-10-8(c); and
- (2) covered under a contract between the Indiana land resources council and the landowner under IC 15-7-10-9.

(b) If land being condemned under this article is designated as protected farmland under a contract entered into under IC 15-7-10-9, the damages offered by the condemnor shall be two hundred percent (200%) of:

- (1) the fair market value offered under section 5 of this chapter; or
- (2) the award made by a court under this article.

(c) This section does not apply to land that is being condemned for:

- (1) a highway;
- (2) a road;
- (3) a street; or
- (4) a right-of-way under IC 32-24-4-1.

SECTION 16. THE FOLLOWING ARE REPEALED [EFFECTIVE APRIL 1, 2004]: IC 6-2.5-4-4.5; IC 6-2.5-6-15.

SECTION 17. IC 6-2.5-5-15 IS REPEALED [EFFECTIVE JULY 1, 2004].



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SECTION 18. IC 9-18-9-4 IS REPEALED [EFFECTIVE JULY 1, 2004].

SECTION 19. [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)] (a) IC 6-2.5-3-5, as amended by this act, applies only to vehicles, watercraft, and aircraft that are initially titled, registered, or licensed in Indiana after June 30, 2004.

(b) IC 6-2.5-4-11, as amended by this act, applies only to transactions occurring after March 1, 2004. A retail transaction to which IC 6-2.5-4-11, as amended by this act, applies shall be considered as having occurred after March 1, 2004, if charges are collected for the retail transactions upon original statements and billings dated after March 31, 2004.

(c) IC 6-2.5-8-10, as amended by this act, and the repeal of IC 6-2.5-5-15 by this act apply only to retail transactions occurring after June 30, 2004. A retail transaction shall be considered as having occurred after June 30, 2004, to the extent that delivery of the property or services constituting selling at retail is made after that date to the purchaser or to the place of delivery designated by the purchaser. However, a transaction shall be considered as having occurred before July 1, 2004, to the extent that the agreement of the parties to the transaction was entered into before July 1, 2004, and payment for the property or services furnished in the transaction is made before July 1, 2004, notwithstanding the delivery of the property or services after June 30, 2004.

(d) IC 6-2.5-6-9, as amended by this act, applies only to deductions assigned after June 30, 2004.

(e) IC 6-3-1-3.5, IC 6-3-2-2.5, and IC 6-3-2-2.6, all as amended by this act, apply only to taxable years beginning after December 31, 2003.

(f) The following provisions apply to deductions for net operating losses that are claimed after December 31, 2003:

(1) Deductions for net operating losses that are incurred in taxable years beginning after December 31, 2003, and are carried back or carried forward and deducted in taxable years ending before January 1, 2004, must be calculated under IC 6-3-2-2.5 and IC 6-3-2-2.6, both as amended by this act.

(2) Deductions for net operating losses that were incurred in taxable years ending before January 1, 2004, and that are carried forward and deducted in taxable years ending after December 31, 2003, must be calculated under IC 6-3-2-2.5 and IC 6-3-2-2.6, both as amended by this act.

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1 **(3) Deductions for net operating losses that were incurred in**
2 **taxable years ending before January 1, 2004, and are carried**
3 **back or carried forward and deducted in taxable years ending**
4 **before January 1, 2004, must be calculated under the versions**
5 **of IC 6-3-2-2.5 and IC 6-3-2-2.6 that were in effect in the year**
6 **the net operating loss was incurred.**

7 **(4) Regardless of the applicable method of calculation in the**
8 **year in which the net operating loss is deducted, any net**
9 **operating loss available for carry forward shall be reduced by**
10 **the amount of the net operating loss previously deducted in an**
11 **earlier taxable year.**

12 **SECTION 20. [EFFECTIVE JANUARY 1, 2005] IC 6-1.1-6.9, as**
13 **added by this act, applies only to property taxes first due and**
14 **payable after December 31, 2005.**

15 **SECTION 21. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1365, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. For purposes of this chapter:

(a) "Use" means the exercise of any right or power of ownership over tangible personal property.

(b) "Storage" means the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana.

(c) "A retail merchant engaged in business in Indiana" includes any retail merchant who makes retail transactions in which a person acquires personal property **or services** for use, storage, or consumption in Indiana and who: ~~maintains~~:

(1) **maintains** an office, place of distribution, sales location, sample location, warehouse, storage place, or other place of business which is located in Indiana and which the retail merchant maintains, occupies, or uses, either permanently or temporarily, either directly or indirectly, and either by ~~himself~~ **the retail merchant** or through ~~an~~ **a representative**, agent, or subsidiary; ~~or~~

(2) **maintains** a representative, agent, salesman, canvasser, or solicitor who, while operating in Indiana under the authority of and on behalf of the retail merchant or a subsidiary of the retail merchant, sells, delivers, **installs, repairs, assembles, sets up, accepts returns of, bills, invoices**, or takes orders for sales of tangible personal property **or services** to be used, stored, or consumed in Indiana;

(3) **is otherwise required to register as a retail merchant under IC 6-2.5-8-1; or**

(4) **may be required by the state to collect tax under this article to the extent allowed under the Constitution of the United States and federal law.**

(d) Notwithstanding any other provision of this section, tangible or intangible property that is:

(1) owned or leased by a person that has contracted with a commercial printer for printing; and

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(2) located at the premises of the commercial printer; shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person. A commercial printer with which a person has contracted for printing shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person."

Page 3, between lines 33 and 34, begin a new paragraph and insert:
 "SECTION 5. IC 6-2.5-8-10, AS AMENDED BY P.L.254-2003, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10. (a) A person that:

- (1) makes retail transactions from outside Indiana to a destination in Indiana;
- (2) does not maintain a place of business in Indiana; and
- (3) either:
 - (A) engages in the regular or systematic soliciting of retail transactions from potential customers in Indiana;
 - (B) enters into a contract to provide property or services to an agency (as defined in IC 4-13-2-1) or ~~an~~ **a state educational institution of higher education** (as defined in IC 20-12-0.5-1); ~~or~~
 - (C) agrees to sell property or services to an agency (as defined in IC 4-13-2-1) or an institution of higher education (as defined in IC 20-12-0.5-1); **or**
 - (D) is closely related to another person that maintains a place of business in Indiana or is described in clause (A), (B), or (C);**

shall file an application for a retail merchant's certificate under this chapter and collect and remit tax as provided in this article. Conduct described in subdivision (3)(B) and (3)(C) occurring after June 30, 2003, constitutes consent to be treated under this article as if the person has a place of business in Indiana or is engaging in conduct described in subdivision (3)(A), including the provisions of this article that require a person to collect and remit tax under this article.

(b) A person is rebuttably presumed to be engaging in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person does any of the following:

- (1) Distributes catalogs, periodicals, advertising flyers, or other written solicitations of business to potential customers in Indiana, regardless of whether the distribution is by mail or otherwise and without regard to the place from which the distribution originated

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or in which the materials were prepared.

(2) Displays advertisements on billboards or displays other outdoor advertisements in Indiana.

(3) Advertises in newspapers published in Indiana.

(4) Advertises in trade journals or other periodicals that circulate primarily in Indiana.

(5) Advertises in Indiana editions of a national or regional publication or a limited regional edition in which Indiana is included as part of a broader regional or national publication if the advertisements are not placed in other geographically defined editions of the same issue of the same publication.

(6) Advertises in editions of regional or national publications that are not by the contents of the editions geographically targeted to Indiana but that are sold over the counter in Indiana or by subscription to Indiana residents.

(7) Broadcasts on a radio or television station located in Indiana.

(8) Makes any other solicitation by telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.

(c) A person not maintaining a place of business in Indiana is considered to be engaged in the regular or systematic soliciting of retail transactions from potential customers in Indiana if the person engages in any of the activities described in subsection (b) and:

(1) makes at least one hundred (100) retail transactions from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months; or

(2) makes at least ten (10) retail transactions totaling more than one hundred thousand dollars (\$100,000) from outside Indiana to destinations in Indiana during a period of twelve (12) consecutive months.

(d) **Subject to subsection (e)**, the location in or outside Indiana of vendors that:

(1) are independent of a person that is soliciting customers in Indiana; and

(2) provide products or services to the person in connection with the person's solicitation of customers in Indiana:

(A) including products and services such as creation of copy, printing, distribution, and recording; **but**

(B) excluding:

(i) delivery of goods;

(ii) billing or invoicing for the sale of goods;

(iii) providing repairs of goods;

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(iv) assembling or setting up goods for use by the purchaser; or

(v) accepting returns of unwanted or damaged goods;

is not to be taken into account in the determination of whether the person is required to collect use tax under this section.

(e) Subsection (d) does not apply if the person soliciting orders is closely related to the vendor.

(f) For purposes of subsections (a) and (e), a person is closely related to another person if:

(1) the two (2) persons:

(A) use an identical or a substantially similar name, trademark, or good will to develop, promote, or maintain sales;

(B) pay for each other's services in whole or in part contingent on the volume or value of sales; or

(C) share a common business plan or substantially coordinate their business plans; and

(2) either:

(A) one (1) or both of the persons are corporations and:

(i) one (1) person; and

(ii) any other person related to the person in a manner that would require an attribution of stock from the corporation to the person or from the person to the corporation under the attribution rules of Section 318 of the Internal Revenue Code;

own directly, indirectly, beneficially, or constructively at least fifty percent (50%) of the value of the corporation's outstanding stock;

(B) both entities are corporations and an individual stockholder and the members of the stockholder's family (as defined in Section 318 of the Internal Revenue Code) own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the value of both entities' outstanding stock; or

(C) one (1) or both persons are limited liability companies, partnerships, limited liability partnerships, estates, or trusts, and their members, partners, or beneficiaries own directly, indirectly, beneficially, or constructively a total of at least fifty percent (50%) of the profits, capital, stock, or value of one (1) or both persons."

Page 9, between lines 34 and 35, begin a new paragraph and insert:

"(g) An adjustment under subsection (a)(20), (b)(6), (c)(6),

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(d)(6), or (e)(4) is not required to the extent that:

- (1) the taxpayer establishes by clear and convincing evidence, as determined by the department, that the adjustment is unreasonable; or
- (2) the taxpayer and the department agree in writing to the application or use of an alternative method of apportionment under IC 6-3-2-2(l).

SECTION 7. IC 6-3-1-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004] (RETROACTIVE)]: Sec. 20. The term "business income" means:

- (1) income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations; and
- (2) all other income that the state is not prohibited from taxing under the Constitution of the United States or other federal law."

Page 10, line 12, delete "any of the following:" and insert " with respect to any taxpayer during all or any part of a taxable year, is:

- (1) a person or corporation that is a related entity;
- (2) a person or corporation that is a component member (as defined in Section 1563(b) of the Internal Revenue Code);
- (3) a person or corporation to or from which there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code; or
- (4) a person, corporation, or partnership that, notwithstanding its form of organization, bears the same relationship to the taxpayer as a person or corporation described in subdivision (1), (2), or (3)."

Page 10, delete lines 13 through 37.

Page 11, between lines 28 and 29, begin a new paragraph and insert:

"SECTION 12. IC 6-3-1-38 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 38. As used in this chapter, "related entity" means:

- (1) a stockholder who is:
 - (A) an individual; or
 - (B) a member of the stockholder's family set forth in Section 318 of the Internal Revenue Code;
 if the stockholder and the members of the stockholder's family directly, indirectly, beneficially, or constructively own

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a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

(2) a:

(A) stockholder; or

(B) stockholder's partnership, estate, trust, or corporation; if the stockholder and the stockholder's partnership, estate, trust, or corporation directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or

(3) a:

(A) corporation; or

(B) party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code; if the taxpayer directly, indirectly, beneficially, or constructively owns a total of at least fifty percent (50%) of the value of the corporation's outstanding stock.

The attribution rules of the Internal Revenue Code apply for purposes of determining whether the ownership requirements of this definition have been met.

SECTION 13. IC 6-3-2-2, AS AMENDED BY P.L.192-2002(ss), SECTION 71, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2. (a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

(1) income from real or tangible personal property located in this state;

(2) income from doing business in this state;

(3) income from a trade or profession conducted in this state;

(4) compensation for labor or services rendered within this state; and

(5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter; and

(6) any business income, regardless of whether it is described in this subsection.

In the case of nonbusiness income described in subsection (g), only so much of such income as is allocated to this state under the provisions

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of subsections (h) through (k) shall be deemed to be derived from sources within Indiana. In the case of business income, only so much of such income as is apportioned to this state under the provision of subsection (b) shall be deemed to be derived from sources within the state of Indiana. In the case of compensation of a team member (as defined in section 2.7 of this chapter) only the portion of income determined to be Indiana income under section 2.7 of this chapter is considered derived from sources within Indiana. In the case of a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code, only so much of the income as is apportioned to Indiana under subsection (r) is considered derived from sources within Indiana.

(b) Except as provided in subsection (l) **and subject to subsection (o)**, if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, then the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3). However, after a period of two (2) consecutive quarters of income growth and one (1) additional quarter (regardless of any income growth), the fraction shall be computed as follows:

(1) For all taxable years that begin within the first calendar year immediately following the period, the numerator of the fraction is the sum of the property factor plus the payroll factor plus one hundred thirty-three percent (133%) of the sales factor, and the denominator of the fraction is three and thirty-three hundredths (3.33).

(2) For all taxable years that begin within the second calendar year following the period, the numerator of the fraction is the property factor plus the payroll factor plus one hundred sixty-seven percent (167%) of the sales factor, and the denominator of the fraction is three and sixty-seven hundredths (3.67).

(3) For all taxable years beginning on or after January 1 of the third calendar year following the period, the numerator of the fraction is the property factor plus the payroll factor plus two hundred percent (200%) of the sales factor, and the denominator of the fraction is four (4).

For purposes of this subsection, income growth occurs when the state's

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nonfarm personal income for a calendar quarter increases in comparison with the state's nonfarm personal income for the immediately preceding quarter at an annualized compound rate of five percent (5%) or more, as determined by the budget agency based on current dollar figures provided by the Bureau of Economic Analysis of the United States Department of Commerce or its successor agency. The annualized compound rate shall be computed in accordance with the formula $(1+N)^4-1$, where N equals the percentage change in the state's current dollar nonfarm personal income from one (1) quarter to the next. As soon as possible after two (2) consecutive quarters of income growth, the budget agency shall advise the department of the growth.

(c) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the taxable year. However, with respect to a foreign corporation, the denominator does not include the average value of real or tangible personal property owned or rented and used in a place that is outside the United States. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The average of property shall be determined by averaging the values at the beginning and ending of the taxable year, but the department may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

(d) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the taxable year by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the taxable year. However, with respect to a foreign corporation, the denominator does not include compensation paid in a place that is outside the United States. Compensation is paid in this state if:

- (1) the individual's service is performed entirely within the state;
- (2) the individual's service is performed both within and without this state, but the service performed without this state is incidental to the individual's service within this state; or
- (3) some of the service is performed in this state and:
 - (A) the base of operations or, if there is no base of operations,

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the place from which the service is directed or controlled is in this state; or

(B) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual is a resident of this state.

(e) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the taxable year, and the denominator of which is the total sales of the taxpayer everywhere during the taxable year. Sales include receipts from intangible property and receipts from the sale or exchange of intangible property. However, with respect to a foreign corporation, the denominator does not include sales made in a place that is outside the United States. Receipts from intangible personal property are derived from sources within Indiana if the receipts from the intangible personal property are attributable to Indiana under section 2.2 of this chapter. Sales of tangible personal property are in this state if:

(1) the property is delivered or shipped to a purchaser, other than the United States government, within this state, regardless of the f.o.b. point or other conditions of the sale; or

(2) the property is shipped from an office, a store, a warehouse, a factory, or other place of storage in this state and:

(A) the purchaser is the United States government; or

(B) the taxpayer is not taxable in the state of the purchaser.

Gross receipts derived from commercial printing as described in IC 6-2.5-1-10 shall be treated as sales of tangible personal property for purposes of this chapter.

(f) Sales, other than receipts from intangible property covered by subsection (e) and sales of tangible personal property, are in this state if:

(1) the income-producing activity is performed in this state; or

(2) the income-producing activity is performed both within and without this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(g) Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections (h) through (k).

(h)(1) Net rents and royalties from real property located in this state are allocable to this state.

(2) Net rents and royalties from tangible personal property are

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allocated to this state:

- (i) if and to the extent that the property is utilized in this state; or
- (ii) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year, and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(i)(1) Capital gains and losses from sales of real property located in this state are allocable to this state.

(2) Capital gains and losses from sales of tangible personal property are allocable to this state if:

- (i) the property had a situs in this state at the time of the sale; or
- (ii) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(3) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(j) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(k)(1) Patent and copyright royalties are allocable to this state:

- (i) if and to the extent that the patent or copyright is utilized by the taxpayer in this state; or
- (ii) if and to the extent that the patent or copyright is utilized by the taxpayer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(2) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(3) A copyright is utilized in a state to the extent that printing or

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other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(l) If the allocation and apportionment provisions of this article do not fairly represent the taxpayer's income derived from sources within the state of Indiana, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (1) separate accounting;
- (2) the exclusion of any one (1) or more of the factors;
- (3) the inclusion of one (1) or more additional factors which will fairly represent the taxpayer's income derived from sources within the state of Indiana; or
- (4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

(m) In the case of two (2) or more organizations, trades, or businesses owned or controlled directly or indirectly by the same interests, the department shall distribute, apportion, or allocate the income derived from sources within the state of Indiana between and among those organizations, trades, or businesses in order to fairly reflect and report the income derived from sources within the state of Indiana by various taxpayers.

(n) For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if:

- (1) in that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or
- (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

(o) Notwithstanding subsections (l) and (m), the department may not, under any circumstances, require that income, deductions, and credits attributable to a taxpayer and another entity be reported in a combined income tax return for any taxable year, if the other entity is:

- (1) a foreign corporation; or
- (2) a corporation that is classified as a foreign operating corporation for the taxable year by section 2.4 of this chapter.

(p) Notwithstanding subsections (l) and (m), the department may not require that income, deductions, and credits attributable to a taxpayer and another entity not described in subsection (o)(1) or (o)(2) be

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reported in a combined income tax return for any taxable year, unless the department is unable to fairly reflect the taxpayer's adjusted gross income for the taxable year through use of other powers granted to the department by subsections (l) and (m).

(q) Notwithstanding subsections (o) and (p), one (1) or more taxpayers may petition the department under subsection (l) for permission to file a combined income tax return for a taxable year. The petition to file a combined income tax return must be completed and filed with the department not more than thirty (30) days after the end of the taxpayer's taxable year.

(r) This subsection applies to a corporation that is a life insurance company (as defined in Section 816(a) of the Internal Revenue Code) or an insurance company that is subject to tax under Section 831 of the Internal Revenue Code. The corporation's adjusted gross income that is derived from sources within Indiana is determined by multiplying the corporation's adjusted gross income by a fraction:

- (1) the numerator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks in the state; and
- (2) the denominator of which is the direct premiums and annuity considerations received during the taxable year for insurance upon property or risks everywhere.

The term "direct premiums and annuity considerations" means the gross premiums received from direct business as reported in the corporation's annual statement filed with the department of insurance."

Page 17, after line 42, begin a new paragraph and insert:

"(f) An adjustment under subsection (a)(1)(H) or (e) is not required to the extent that:

- (1) the taxpayer establishes by clear and convincing evidence, as determined by the department, that the adjustment is unreasonable; or**
- (2) the taxpayer and the department agree in writing to the application or use of an alternative method of apportionment.**

Page 18, line 21, delete "any of the" and insert "**with respect to any taxpayer during all or any part of a taxable year, is an entity:**

- (1) that is a related entity;**
- (2) that is a component member (as defined in Section 1563(b) of the Internal Revenue Code);**
- (3) to or from which there is attribution of stock ownership in accordance with Section 1563(e) of the Internal Revenue Code; or**
- (4) that, notwithstanding its form of organization, bears the**

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same relationship to the taxpayer as a person or corporation described in subdivision (1), (2), or (3)."

Page 18, delete lines 22 through 42.

Page 19, delete lines 1 through 5.

Page 19, between lines 38 and 39, begin a new paragraph and insert:

"SECTION 21. IC 6-5.5-1-12.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 12.8. As used in this chapter, "related entity" means:

(1) a stockholder who is:

(A) an individual; or

(B) a member of the stockholder's family set forth in Section 318 of the Internal Revenue Code;

if the stockholder and the members of the stockholder's family directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock;

(2) a:

(A) stockholder; or

(B) stockholder's partnership, estate, trust, or corporation;

if the stockholder and the stockholder's partnership, estate, trust, or corporation directly, indirectly, beneficially, or constructively own a total of at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or

(3) a:

(A) corporation; or

(B) party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code;

if the taxpayer directly, indirectly, beneficially, or constructively owns a total of at least fifty percent (50%) of the value of the corporation's outstanding stock.

The attribution rules of the Internal Revenue Code apply for purposes of determining whether the ownership requirements of this definition have been met."

Page 20, line 9, delete "The" and insert **"IC 6-2.5-8-10, as amended by this act, and the"**.

Page 20, line 9, delete "applies" and insert **"apply"**.

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1365 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 17, nays 10.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 3, line 30, after "(c)" insert **"This subsection applies only to retail transactions occurring after June 30, 2004."**

Page 3, line 30, delete "not"

Page 3, line 30, delete "." and insert **"only if the retail merchant that paid the state gross retail or use tax liability assigned the right to the deduction in writing."**

(Reference is to HB 1365 as printed January 27, 2004.)

MAYS

HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 31, between lines 6 and 7, begin a new paragraph and insert:

"SECTION 23. IC 6-8.1-3-16, AS AMENDED BY P.L.192-2002(ss), SECTION 141, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) The department shall prepare a list of all outstanding tax warrants for listed taxes each month. The list shall identify each taxpayer liable for a warrant by name, address, amount of tax, and either Social Security number or employer identification number. Unless the department renews the warrant, the department shall exclude from the list a warrant issued more than ten (10) years before the date of the list. The department shall certify a copy of the list to the bureau of motor vehicles.

(b) The department shall prescribe and furnish tax release forms for use by tax collecting officials. A tax collecting official who collects taxes in satisfaction of an outstanding warrant shall issue to the taxpayers named on the warrant a tax release stating that the tax has been paid. The department may also issue a tax release:

- (1) to a taxpayer who has made arrangements satisfactory to the department for the payment of the tax; or
- (2) by action of the commissioner under IC 6-8.1-8-2(k).

(c) The department may not issue or renew:

- (1) a certificate under IC 6-2.5-8;
- (2) a license under IC 6-6-1.1 or IC 6-6-2.5; or
- (3) a permit under IC 6-6-4.1;

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to a taxpayer whose name appears on the most recent monthly warrant list, unless that taxpayer pays the tax, makes arrangements satisfactory to the department for the payment of the tax, or a release is issued under IC 6-8.1-8-2(k).

(d) The bureau of motor vehicles shall, before issuing the title to a motor vehicle under IC 9-17, determine whether the purchaser's or assignee's name is on the most recent monthly warrant list. If the purchaser's or assignee's name is on the list, the bureau shall enter as a lien on the title the name of the state as the lienholder unless the bureau has received notice from the commissioner under IC 6-8.1-8-2(k). The tax lien on the title:

- (1) is subordinate to a perfected security interest (as defined and perfected in accordance with IC 26-1-9.1); and
- (2) shall otherwise be treated in the same manner as other title liens.

(e) The commissioner is the custodian of all titles for which the state is the sole lienholder under this section. Upon receipt of the title by the department, the commissioner shall notify the owner of the department's receipt of the title.

(f) The department shall reimburse the bureau of motor vehicles for all costs incurred in carrying out this section.

(g) Notwithstanding IC 6-8.1-8, a person who is authorized to collect taxes, interest, or penalties on behalf of the department under IC 6-3 or IC 6-3.5 may not, except as provided in subsection (h) or (i), receive a fee for collecting the taxes, interest, or penalties if:

- (1) the taxpayer pays the taxes, interest, or penalties as consideration for the release of a lien placed under subsection (d) on a motor vehicle title; or
- (2) the taxpayer has been denied a certificate or license under subsection (c) within sixty (60) days before the date the taxes, interest, or penalties are collected.

(h) In the case of a sheriff, subsection (g) does not apply if:

- (1) the sheriff collects the taxes, interest, or penalties within sixty (60) days after the date the sheriff receives the tax warrant; or
- (2) the sheriff collects the taxes, interest, or penalties through the sale or redemption, in a court proceeding, of a motor vehicle that has a lien placed on its title under subsection (d).

(i) In the case of a person other than a sheriff:

- (1) subsection (g)(2) does not apply if the person collects the taxes, interests, or penalties within sixty (60) days after the date the commissioner employs the person to make the collection; and
- (2) subsection (g)(1) does not apply if the person collects the

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taxes, interest, or penalties through the sale or redemption, in a court proceeding, of a motor vehicle that has a lien placed on its title under subsection (d).

(j) IC 5-14-3-4, IC 6-8.1-7-1, and any other law exempting information from disclosure by the department does not apply to this subsection. From the list prepared under subsection (a), the department shall compile each month a list of the taxpayers subject to tax warrants that:

(1) were issued at least twelve (12) months before the date of the list; and

(2) are for amounts that exceed one thousand dollars (\$1,000).

The list compiled under this subsection must identify each taxpayer liable for a warrant by name, address, and amount of tax. The department shall publish the list compiled under this subsection on accessIndiana (as defined in IC 5-21-1-1.5) and make the list available for public inspection and copying under IC 5-14-3. The department or an agent, employee, or officer of the department is immune from liability for the publication of information under this subsection.

(k) The department may not publish a list under subsection (j) that identifies a particular taxpayer unless at least two (2) weeks before the publication of the list the department sends notice to the taxpayer stating that the taxpayer:

(1) is subject to a tax warrant that:

(A) was issued at least twelve (12) months before the date of the notice; and

(B) is for an amount that exceeds one thousand dollars (\$1,000); and

(2) will be identified on a list to be published on accessIndiana unless a tax release is issued to the taxpayer under subsection (b).

SECTION 24. IC 34-30-2-16.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16.7. IC 6-8.1-3-16(j) (Concerning the department of state revenue for publishing a list of delinquent taxpayers)."

Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 10, delete lines 13 through 15.
 Page 11, delete lines 3 through 5.
 Page 13, delete lines 4 through 6.
 Page 22, delete lines 17 through 42.
 Delete pages 23 through 24.
 Page 25, delete lines 1 through 26.
 Page 31, delete lines 37 through 42.
 Page 32, delete line 1.
 Page 32, line 2, delete "(g)" and insert "(f)".
 Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

TURNER

HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 6-2.5-1-5, AS AMENDED BY P.L.257-2003, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) Except as provided in subsection (b), "gross retail income" means the total gross receipts, of any kind or character, received in a retail transaction, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for:

- (1) the seller's cost of the property sold;
- (2) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
- (3) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;
- (4) delivery charges, **except as provided in subsection (b);**
- (5) installation charges, **except as provided in subsection (b);** or
- (6) the value of exempt personal property given to the purchaser

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where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(b) "Gross retail income" does not include that part of the gross receipts attributable to:

(1) the value of any tangible personal property received in a like kind exchange in the retail transaction, if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract;

(3) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(4) interest, financing, and carrying charges from credit extended on the sale of personal property if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(6) delivery charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser; or

(7) installation charges that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(c) A public utility's or a power subsidiary's gross retail income includes all gross retail income received by the public utility or power subsidiary, including any minimum charge, flat charge, membership fee, or any other form of charge or billing."

Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

ESPICH

HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 27, line 2, delete "or indirectly".

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Page 29, delete lines 1 through 4.
 Page 29, line 5, delete "(5)" and insert "(1)".
 Page 29, line 6, delete "(6)" and insert "(2)".
 Page 29, line 7, delete "(7)" and insert "(3)".
 Page 29, line 8, delete "(8)" and insert "(4)".
 Page 29, line 9, delete "(9)" and insert "(5)".
 Page 29, line 10, delete "(10)" and insert "(6)".
 Page 29, line 11, delete "(11) other debt obligations, including" and insert "(7)".
 Page 29, line 39, delete "property" and insert "**investments**".
 (Reference is to HB 1365 as printed January 27, 2004.)

FRENZ

HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 5, line 7, strike "an".
 Page 5, line 7, after "an" insert "**a state educational**".
 Page 5, line 7, strike "of higher education".
 Page 10, delete lines 7 through 12, begin a new line block indented and insert:
 "(20) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal adjusted gross income under the Internal Revenue Code."
 Page 10, delete lines 39 through 42, begin a new line block indented and insert:
 "(6) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code."
 Page 11, delete lines 1 through 2.
 Page 11, delete lines 29 through 34, begin a new line block indented and insert:

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"(6) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code."

Page 12, delete lines 16 through 21, begin a new line block indented and insert:

"(6) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code."

Page 12, delete lines 40 through 42, begin a new line block indented and insert:

"(4) Subject to subsection (g), add an amount equal to intangibles payments described in section 34 of this chapter that are directly or indirectly paid, accrued, or incurred to a related member during the taxable year to the extent the intangibles payments are deductible in calculating federal taxable income under the Internal Revenue Code."

Page 13, delete lines 1 through 3.

Page 13, line 27, delete "clear and convincing" and insert **"a preponderance of the"**.

Page 13, line 29, delete "or".

Page 13, line 32, delete "." and insert **"; or"**.

Page 13, between lines 32 and 33, begin a new line block indented and insert:

"(3) the intangibles payments are being paid or incurred to a related member organized under the laws of a country other than the United States, and the other country has entered into a comprehensive income tax treaty with the United States."

Page 14, delete lines 2 through 17, begin a new paragraph and insert:

"SECTION 8. IC 6-3-1-34 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 34. As used in this article, "intangibles payment" means a payment directly connected to the use, maintenance, or management of:

(1) stock;

(2) bonds;



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- (3) interests in partnerships;
- (4) licenses;
- (5) trademarks;
- (6) copyrights;
- (7) trade names;
- (8) trade dress;
- (9) service marks;
- (10) mask works;
- (11) trade secrets;
- (12) patents; or
- (13) any other similar types of intangible assets, as determined by the department."

Page 14, line 21, after "means" insert ",".

Page 14, line 22, delete ", is".

Page 14, line 29, delete "or partnership" and insert "**partnership, or any other pass through entity**".

Page 14, delete lines 33 through 42.

Page 15, delete lines 1 through 23.

Page 15, line 24, delete "IC 6-3-1-38" and insert "IC 6-3-1-36".

Page 15, line 26, delete "38" and insert "**36**".

Page 15, line 38, after "trust," delete "or".

Page 15, line 38, delete ";" and insert "**, or other pass through entity;**".

Page 28, line 33, delete "clear and convincing" and insert "**a preponderance of the**".

Page 28, line 35, delete "or".

Page 28, line 37, delete "." and insert "**; or**".

Page 28, between lines 37 and 38, begin a new line block indented and insert:

"(3) the intangibles payments are being paid or incurred to a related member organized under the laws of a country other than the United States, and the other country has entered into a comprehensive income tax treaty with the United States."

Page 29, line 4, delete "a".

Page 29, line 16, after "means" insert ",".

Page 29, line 17, delete ", is".

Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be amended to read as follows:

Page 5, line 7, strike "an" and insert "**a state educational**".

Page 7, line 7, strike "of higher education".

Page 14, line 21, after "means" insert ",".

Page 14, line 22, after "year" delete ", is".

Page 25, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 16. IC 6-3.1-26-8, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 8. (a) As used in this chapter, "qualified investment" means the amount of the taxpayer's expenditures for:

- (1) the purchase of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing equipment;
- (2) the purchase of new computers and related equipment;
- (3) costs associated with the modernization of existing telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities;
- (4) onsite infrastructure improvements;
- (5) the construction of new telecommunications, production, manufacturing, fabrication, assembly, extraction, mining, processing, refining, or finishing facilities;
- (6) costs associated with retooling existing machinery and equipment; and
- (7) costs associated with the construction of special purpose buildings and foundations for use in the computer, software, biological sciences, or telecommunications industry.

~~that are certified by the board under this chapter as being eligible for the credit under this chapter.~~

(b) The term does not include property that can be readily moved outside Indiana.

SECTION 2. IC 6-3.1-26-10, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 10. As used in this chapter, "state tax liability growth" means the difference between a taxpayer's state tax liability in a taxable year minus ~~the greater of:~~

- (1) the taxpayer's state tax liability in the most recent prior taxable year in which the taxpayer claimed part of a credit under this

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~~chapter; or~~

(2) the taxpayer's base state tax liability,
before the application of a credit under this chapter.

SECTION 3. IC 6-3.1-26-13, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 13. A taxpayer that:

(1) ~~is awarded a tax credit under this chapter by the board; and~~
(2) ~~complies with the conditions set forth in this chapter and the agreement entered into by the board and the taxpayer under this chapter;~~

(1) makes a qualified investment; or

(2) creates the number of jobs required under section 13.5 of this chapter;

is entitled to a credit against the taxpayer's state tax liability in a taxable year.

SECTION 4. IC 6-3.1-26-13.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 13.5. To qualify for a credit under section 13(2) of this chapter, a taxpayer must increase in a particular taxable year the number of the taxpayer's employees working in Indiana by:**

(1) at least ten (10), in the case of a taxpayer having at least one hundred (100) employees on the first day of the taxpayer's taxable year; or

(2) at least ten percent (10%), in the case of a taxpayer having less than one hundred (100) employees on the first day of the taxpayer's taxable year.

SECTION 5. IC 6-3.1-26-14, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 14. (a) **This section applies only to a taxpayer entitled to a credit under section 13(1) of this chapter.**

(b) The total amount of a tax credit ~~claimed~~ allowed under this chapter equals thirty percent (30%) of the amount of a qualified investment made by the taxpayer in Indiana. However, the maximum amount of the credit that a taxpayer may claim in the taxable year in which the taxpayer makes a qualified investment may not exceed the taxpayer's state tax liability growth.

(b) In the taxable year in which a taxpayer makes a qualified investment, the taxpayer may claim a credit under this chapter in an amount equal to the lesser of:

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(1) thirty percent (30%) of the amount of the qualified investment; or

(2) the taxpayer's state tax liability growth;

(c) The taxpayer may carry forward any unused credit.

SECTION 6. IC 6-3.1-26-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 14.5. (a) This section applies only to a taxpayer entitled to a credit under section 13(2) of this chapter.**

(b) The total amount of a tax credit allowed under this chapter equals thirty percent (30%) of the amount of wages and benefits paid to the taxpayer's new employees in the taxable year in which the new employees were first employed. However, the maximum amount of the credit that a taxpayer may claim in the taxable year in which the new employees were first employed may not exceed the taxpayer's state tax liability growth.

(c) The taxpayer may carry forward any unused credit.

SECTION 7. IC 6-3.1-26-15, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: **Sec. 15. (a) A taxpayer may carry forward an unused credit for not more than nine (9) consecutive taxable years beginning with the taxable year after the taxable year in which the taxpayer makes the qualified investment or hires the number of new employees required under section 13.5 of this chapter.**

(b) The amount that a taxpayer may carry forward to a particular taxable year under this section equals the lesser of the following:

(1) The taxpayer's state tax liability growth.

(2) The unused part of a credit allowed under this chapter.

(c) A taxpayer may:

(1) claim a tax credit under this chapter for a qualified investment or for hiring the number of new employees required under section 13.5 of this chapter; and

(2) carry forward a remainder for one (1) or more:

(A) different qualified investments; or

(B) credits claimed for hiring the number of new employees required under section 13.5 of this chapter;

in the same taxable year.

(d) The total amount of each tax credit claimed under this chapter may not exceed:

(1) thirty percent (30%) of the qualified investment for which the tax credit is claimed, in the case of a taxpayer that qualifies for

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a tax credit under section 13(1) of this chapter; or
 (2) thirty percent (30%) of the amount of wages and benefits paid to the taxpayer's new employees in the taxable year in which the new employees were first employed, in the case of a taxpayer that qualifies for a tax credit under section 13(2) of this chapter.

SECTION 8. IC 6-3.1-26-16, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 16. If a pass through entity does not have state tax liability ~~growth~~ against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit **against the shareholder's or partner's state tax liability** equal to:

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

SECTION 9. IC 6-3.1-26-19, AS ADDED BY P.L.224-2003, SECTION 197, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 19. A person is not entitled to claim the credit provided by this chapter for any jobs that the person relocates from one (1) site in Indiana to another site in Indiana. ~~Determinations under this section shall be made by the board.~~

SECTION 10. IC 6-3.1-26-27 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 27. **To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department of state revenue. The taxpayer shall submit to the department of state revenue all information that the department of state revenue determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether the taxpayer has made a qualified investment as required under section 13 of this chapter or hired the required number of new employees under section 13.5 of this chapter."**

Page 29, line 4, delete "a".

Page 29, line 16, after "means" insert ",".

Page 29, line 17, after "year" delete ", is".

Page 31, between lines 6 and 7, begin a new paragraph and insert:
 "SECTION 11. THE FOLLOWING ARE REPEALED

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[EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: IC 6-3.1-26-2; IC 6-3.1-26-3; IC 6-3.1-26-5; IC 6-3.1-26-12; IC 6-3.1-26-17; IC 6-3.1-26-18; IC 6-3.1-26-20; IC 6-3.1-26-21; IC 6-3.1-26-22; IC 6-3.1-26-23; IC 6-3.1-26-24; IC 6-3.1-26-25; IC 6-3.1-26-26; P.L.224-2003, SECTION 198.

SECTION 12. [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)] **Subject to carryovers authorized by IC 6-3.1-26-15, as amended by this act, IC 6-3.1-26, as amended by this act, applies to taxable years beginning after December 31, 2004.**

SECTION 13. [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)] **IC 6-3.1-26-13.5, IC 6-3.1-26-14.5, and IC 6-3.1-26-27, all as added by this act, apply to taxable years beginning after December 31, 2003."**

Re-number all SECTIONS consecutively.

(Reference is to HB 1365 as printed January 27, 2004.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be made a Special Order of Business for 5, February 5, 2004, at 7:30 pm.

ESPICH

HOUSE MOTION

Mr. Speaker: I move that House Bill 1365 be recommitted to a Committee of One, its author, with specific instructions to amend as follows:

Page 34, between lines 12 and 13, begin a new paragraph and insert: "SECTION 31. IC 9-29-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. The registration fee for each semitrailer to be used with a tractor licensed under this section is as follows:

- (1) Thirty dollars (\$30) for a one (1) year registration.
- (2) Sixty dollars (\$60) for a five (5) year registration. However, the five (5) year registration fee shall be reduced by twelve dollars (\$12) for each full year after the initial year of the five (5) year period provided in IC 9-18. However, the reduced fee may not be less than the registration fee for a one (1) year registration.
- (3) For a permanent registration, the fee is ~~as follows:~~
 - (A) ~~sixty-five dollars (\$65). at the time the semitrailer is first registered.~~
 - (B) ~~Two dollars (\$2) annually to renew the registration."~~

Page 34, between lines 25 and 26, begin a new paragraph and insert: "SECTION 35. IC 9-18-9-4 IS REPEALED [EFFECTIVE JULY 1, 2004].".

Renumber all SECTIONS consecutively.

(Reference is to HB 1365 as reprinted February 5, 2004.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred House Bill 1365, begs leave to report that said bill has been amended as directed.

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COMMITTEE REPORT

Madam President: The Senate Committee on Finance, to which was referred House Bill No. 1365, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 4-33-12-6, AS AMENDED BY P.L.92-2003, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The department shall place in the state general fund the tax revenue collected under this chapter.

(b) Except as provided by subsections (c) and (d) and IC 6-3.1-20-7, the treasurer of state shall quarterly pay the following amounts:

(1) Except as provided in subsection (k), one dollar (\$1) of the admissions tax collected by the licensed owner for each person embarking on a gambling excursion during the quarter or admitted to a riverboat that has implemented flexible scheduling under IC 4-33-6-21 during the quarter shall be paid to:

(A) the city in which the riverboat is docked, if the city:

- (i) is located in a county having a population of more than one hundred ten thousand (110,000) but less than one hundred fifteen thousand (115,000); or
- (ii) is contiguous to the Ohio River and is the largest city in the county; and

(B) the county in which the riverboat is docked, if the riverboat is not docked in a city described in clause (A).

(2) Except as provided in subsection (k), one dollar (\$1) of the admissions tax collected by the licensed owner for each person:

- (A) embarking on a gambling excursion during the quarter; or
- (B) admitted to a riverboat during the quarter that has implemented flexible scheduling under IC 4-33-6-21;

shall be paid to the county in which the riverboat is docked. In the case of a county described in subdivision (1)(B), this one dollar (\$1) is in addition to the one dollar (\$1) received under subdivision (1)(B).

(3) Except as provided in subsection (k), ten cents (\$0.10) of the admissions tax collected by the licensed owner for each person:

- (A) embarking on a gambling excursion during the quarter; or
- (B) admitted to a riverboat during the quarter that has implemented flexible scheduling under IC 4-33-6-21;

shall be paid to the county convention and visitors bureau or promotion fund for the county in which the riverboat is docked.

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(4) Except as provided in subsection (k), fifteen cents (\$0.15) of the admissions tax collected by the licensed owner for each person:

(A) embarking on a gambling excursion during the quarter; or

(B) admitted to a riverboat during a quarter that has implemented flexible scheduling under IC 4-33-6-21;

shall be paid to the state fair commission, for use in any activity that the commission is authorized to carry out under IC 15-1.5-3.

(5) Except as provided in subsection (k), ten cents (\$0.10) of the admissions tax collected by the licensed owner for each person:

(A) embarking on a gambling excursion during the quarter; or

(B) admitted to a riverboat during the quarter that has implemented flexible scheduling under IC 4-33-6-21;

shall be paid to the division of mental health and addiction. The division shall allocate at least twenty-five percent (25%) of the funds derived from the admissions tax to the prevention and treatment of compulsive gambling.

(6) Except as provided in ~~subsection (k)~~, **section 7 of this chapter**, sixty-five cents (\$0.65) of the admissions tax collected by the licensed owner for each person embarking on a gambling excursion during the quarter or admitted to a riverboat during the quarter that has implemented flexible scheduling under IC 4-33-6-21 shall be paid to the Indiana horse racing commission to be distributed as follows; in amounts determined by the Indiana horse racing commission; for the promotion and operation of horse racing in Indiana:

(A) To one (1) or more breed development funds established by the Indiana horse racing commission under IC 4-31-11-10.

(B) To a racetrack that was approved by the Indiana horse racing commission under IC 4-31. The commission may make a grant under this clause only for purses, promotions, and routine operations of the racetrack. No grants shall be made for long term capital investment or construction and no grants shall be made before the racetrack becomes operational and is offering a racing schedule: **under section 7 of this chapter.**

(c) With respect to tax revenue collected from a riverboat located in a historic hotel district, the treasurer of state shall quarterly pay the following amounts:

(1) Twenty-five percent (25%) of the admissions tax collected during the quarter shall be paid to the county treasurer of the county in which the riverboat is docked. The county treasurer shall distribute the money received under this subdivision as

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follows:

(A) Twenty percent (20%) shall be quarterly distributed to the county treasurer of a county having a population of more than thirty-nine thousand six hundred (39,600) but less than forty thousand (40,000) for appropriation by the county fiscal body after receiving a recommendation from the county executive. The county fiscal body for the receiving county shall provide for the distribution of the money received under this clause to one (1) or more taxing units (as defined in IC 6-1.1-1-21) in the county under a formula established by the county fiscal body after receiving a recommendation from the county executive.

(B) Twenty percent (20%) shall be quarterly distributed to the county treasurer of a county having a population of more than ten thousand seven hundred (10,700) but less than twelve thousand (12,000) for appropriation by the county fiscal body. The county fiscal body for the receiving county shall provide for the distribution of the money received under this clause to one (1) or more taxing units (as defined in IC 6-1.1-1-21) in the county under a formula established by the county fiscal body after receiving a recommendation from the county executive.

(C) Sixty percent (60%) shall be retained by the county where the riverboat is docked for appropriation by the county fiscal body after receiving a recommendation from the county executive. The county fiscal body shall provide for the distribution of part or all of the money received under this clause to the following under a formula established by the county fiscal body:

(i) A town having a population of more than two thousand two hundred (2,200) but less than three thousand five hundred (3,500) located in a county having a population of more than nineteen thousand three hundred (19,300) but less than twenty thousand (20,000).

(ii) A town having a population of more than three thousand five hundred (3,500) located in a county having a population of more than nineteen thousand three hundred (19,300) but less than twenty thousand (20,000).

(2) Sixteen percent (16%) of the admissions tax collected during the quarter shall be paid in equal amounts to each town that:

- (A) is located in the county in which the riverboat docks; and
- (B) contains a historic hotel.

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The town council shall appropriate a part of the money received by the town under this subdivision to the budget of the town's tourism commission.

(3) Nine percent (9%) of the admissions tax collected during the quarter shall be paid to the historic hotel preservation commission established under IC 36-7-11.5.

(4) Twenty-five percent (25%) of the admissions tax collected during the quarter shall be paid to the West Baden Springs historic hotel preservation and maintenance fund established by IC 36-7-11.5-11(b).

(5) Twenty-five percent (25%) of the admissions tax collected during the quarter shall be paid to the department of commerce to be used by the department for the development and implementation of a regional economic development strategy to assist the residents of the county in which the riverboat is located and residents of contiguous counties in improving their quality of life and to help promote successful and sustainable communities. The regional economic development strategy must include goals concerning the following issues:

- (A) Job creation and retention.
- (B) Infrastructure, including water, wastewater, and storm water infrastructure needs.
- (C) Housing.
- (D) Workforce training.
- (E) Health care.
- (F) Local planning.
- (G) Land use.
- (H) Assistance to regional economic development groups.
- (I) Other regional development issues as determined by the department.

(d) With respect to tax revenue collected from a riverboat that operates from a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000), the treasurer of state shall quarterly pay the following amounts:

- (1) Except as provided in subsection (k), one dollar (\$1) of the admissions tax collected by the licensed owner for each person:
 - (A) embarking on a gambling excursion during the quarter; or
 - (B) admitted to a riverboat during the quarter that has implemented flexible scheduling under IC 4-33-6-21;
 shall be paid to the city in which the riverboat is docked.
- (2) Except as provided in subsection (k), one dollar (\$1) of the admissions tax collected by the licensed owner for each person:

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(A) embarking on a gambling excursion during the quarter; or
 (B) admitted to a riverboat during the quarter that has implemented flexible scheduling under IC 4-33-6-21;

shall be paid to the county in which the riverboat is docked.

(3) Except as provided in subsection (k), nine cents (\$0.09) of the admissions tax collected by the licensed owner for each person:

(A) embarking on a gambling excursion during the quarter; or

(B) admitted to a riverboat during the quarter that has implemented flexible scheduling under IC 4-33-6-21;

shall be paid to the county convention and visitors bureau or promotion fund for the county in which the riverboat is docked.

(4) Except as provided in subsection (k), one cent (\$0.01) of the admissions tax collected by the licensed owner for each person:

(A) embarking on a gambling excursion during the quarter; or

(B) admitted to a riverboat during the quarter that has implemented flexible scheduling under IC 4-33-6-21;

shall be paid to the northwest Indiana law enforcement training center.

(5) Except as provided in subsection (k), fifteen cents (\$0.15) of the admissions tax collected by the licensed owner for each person:

(A) embarking on a gambling excursion during the quarter; or

(B) admitted to a riverboat during a quarter that has implemented flexible scheduling under IC 4-33-6-21;

shall be paid to the state fair commission for use in any activity that the commission is authorized to carry out under IC 15-1.5-3.

(6) Except as provided in subsection (k), ten cents (\$0.10) of the admissions tax collected by the licensed owner for each person:

(A) embarking on a gambling excursion during the quarter; or

(B) admitted to a riverboat during the quarter that has implemented flexible scheduling under IC 4-33-6-21;

shall be paid to the division of mental health and addiction. The division shall allocate at least twenty-five percent (25%) of the funds derived from the admissions tax to the prevention and treatment of compulsive gambling.

(7) Except as provided in ~~subsection (k)~~, **section 7 of this chapter**, sixty-five cents (\$0.65) of the admissions tax collected by the licensed owner for each person embarking on a gambling excursion during the quarter or admitted to a riverboat during the quarter that has implemented flexible scheduling under IC 4-33-6-21 shall be paid to the Indiana horse racing commission to be distributed as follows; in amounts determined by the Indiana

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horse racing commission, for the promotion and operation of horse racing in Indiana:

(A) To one (1) or more breed development funds established by the Indiana horse racing commission under IC 4-31-11-10;

(B) To a racetrack that was approved by the Indiana horse racing commission under IC 4-31. The commission may make a grant under this clause only for purses, promotions, and routine operations of the racetrack. No grants shall be made for long term capital investment or construction, and no grants shall be made before the racetrack becomes operational and is offering a racing schedule: **under section 7 of this chapter.**

(e) Money paid to a unit of local government under subsection (b)(1) through (b)(2), (c)(1) through (c)(2), or (d)(1) through (d)(2):

(1) must be paid to the fiscal officer of the unit and may be deposited in the unit's general fund or riverboat fund established under IC 36-1-8-9, or both;

(2) may not be used to reduce the unit's maximum levy under IC 6-1.1-18.5 but may be used at the discretion of the unit to reduce the property tax levy of the unit for a particular year;

(3) may be used for any legal or corporate purpose of the unit, including the pledge of money to bonds, leases, or other obligations under IC 5-1-14-4; and

(4) is considered miscellaneous revenue.

(f) Money paid by the treasurer of state under subsection (b)(3) or (d)(3) shall be:

(1) deposited in:

(A) the county convention and visitor promotion fund; or

(B) the county's general fund if the county does not have a convention and visitor promotion fund; and

(2) used only for the tourism promotion, advertising, and economic development activities of the county and community.

(g) Money received by the division of mental health and addiction under subsections (b)(5) and (d)(6):

(1) is annually appropriated to the division of mental health and addiction;

(2) shall be distributed to the division of mental health and addiction at times during each state fiscal year determined by the budget agency; and

(3) shall be used by the division of mental health and addiction for programs and facilities for the prevention and treatment of addictions to drugs, alcohol, and compulsive gambling, including the creation and maintenance of a toll free telephone line to

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provide the public with information about these addictions. The division shall allocate at least twenty-five percent (25%) of the money received to the prevention and treatment of compulsive gambling.

(h) This subsection applies to the following:

- (1) Each entity receiving money under ~~subsection (b)~~: **subsection (b)(1) through (b)(5)**.
- (2) Each entity receiving money under subsection (d)(1) through (d)(2).
- (3) Each entity receiving money under subsection (d)(5) through ~~(d)(7)~~: **(d)(6)**.

The treasurer of state shall determine the total amount of money paid by the treasurer of state to an entity subject to this subsection during the state fiscal year 2002. The amount determined under this subsection is the base year revenue for each entity subject to this subsection. The treasurer of state shall certify the base year revenue determined under this subsection to each entity subject to this subsection.

(i) This subsection applies to an entity receiving money under subsection (d)(3) or (d)(4). The treasurer of state shall determine the total amount of money paid by the treasurer of state to the entity described in subsection (d)(3) during state fiscal year 2002. The amount determined under this subsection multiplied by nine-tenths (0.9) is the base year revenue for the entity described in subsection (d)(3). The amount determined under this subsection multiplied by one-tenth (0.1) is the base year revenue for the entity described in subsection (d)(4). The treasurer of state shall certify the base year revenue determined under this subsection to each entity subject to this subsection.

(j) This subsection does not apply to **the Indiana horse racing commission** or an entity receiving money under subsection (c). For state fiscal years beginning after June 30, 2002, the total amount of money distributed to an entity under this section during a state fiscal year may not exceed the entity's base year revenue as determined under subsection (h) or (i). If the treasurer of state determines that the total amount of money distributed to an entity under this section during a state fiscal year is less than the entity's base year revenue, the treasurer of state shall make a supplemental distribution to the entity under IC 4-33-13-5(g).

(k) This subsection does not apply to **the Indiana horse racing commission** or an entity receiving money under subsection (c). For state fiscal years beginning after June 30, 2002, the treasurer of state shall pay that part of the riverboat admissions taxes that:

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- (1) exceed a particular entity's base year revenue; and
 - (2) would otherwise be due to the entity under this section;
- to the property tax replacement fund instead of to the entity.

SECTION 2. IC 4-33-12-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. (a) This section applies only to the Indiana horse racing commission.**

(b) For state fiscal years beginning after June 30, 2003, the Indiana horse racing commission's base year revenue is forty-four million dollars (\$44,000,000).

(c) The total amount of money distributed to the Indiana horse racing commission under section 6 of this chapter during a state fiscal year may not exceed the racing commission's base year revenue. For state fiscal years beginning after June 30, 2003, the treasurer of state shall pay that part of the riverboat admissions taxes that:

- (1) exceed the racing commission's base year revenue; and**
- (2) would otherwise be due to the racing commission under section 6 of this chapter;**

to the property tax replacement fund instead of to the racing commission.

(d) If the treasurer of state determines that the total amount of money distributed to the Indiana horse racing commission under section 6 of this chapter during a state fiscal year is less than the racing commission's base year revenue, the treasurer of state shall make a supplemental distribution to the racing commission under IC 4-33-13-5(g).

(e) Riverboat admissions taxes distributed to the Indiana horse racing commission under section 6 of this chapter and the supplemental distribution paid to the racing commission under IC 4-33-13-5(g) shall be paid as follows:

- (1) Forty percent (40%) for the following purposes:**
 - (A) Forty-eight percent (48%) for standardbred purposes as follows:**
 - (i) Ninety-eight and five-tenths percent (98.5%) for standardbred purses.**
 - (ii) One and five-tenths percent (1.5%) to the horsemen's association representing standardbred owners and trainers.**
 - (B) Forty-eight percent (48%) for thoroughbred purposes as follows:**
 - (i) Ninety-eight and five-tenths percent (98.5%) for**

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thoroughbred purses.

(ii) One and two-tenths percent (1.2%) for the horsemen's association representing thoroughbred owners and trainers.

(iii) Three-tenths of one percent (0.3%) for the horsemen's association representing thoroughbred owners and breeders.

(C) Four percent (4%) for quarter horse purposes as follows:

(i) Ninety-five percent (95%) for quarter horse purses.

(ii) Five percent (5%) for the horsemen's association representing quarter horse owners and trainers.

(2) Forty percent (40%) to be divided equally between each racetrack that was approved by the racing commission under IC 4-31. The commission may make a grant under this subdivision only for purses, promotions, and routine operations of the racetrack.

(3) Twenty percent (20%) to the breed development funds established by the racing commission under IC 4-31-11-10 to be allocated as follows:

(A) Forty-eight percent (48%) to the standardbred development fund.

(B) Forty-eight percent (48%) to the thoroughbred development fund.

(C) Four percent (4%) to the quarter horse development fund.

SECTION 3. IC 4-33-13-5, AS AMENDED BY P.L.224-2003, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) This subsection does not apply to tax revenue remitted by an operating agent operating a riverboat in a historic hotel district. After funds are appropriated under section 4 of this chapter, each month the treasurer of state shall distribute the tax revenue deposited in the state gaming fund under this chapter to the following:

(1) The first thirty-three million dollars (\$33,000,000) of tax revenues collected under this chapter shall be set aside for revenue sharing under subsection (e).

(2) Subject to subsection (c), twenty-five percent (25%) of the remaining tax revenue remitted by each licensed owner shall be paid:

(A) to the city that is designated as the home dock of the riverboat from which the tax revenue was collected, in the case

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of:

- (i) a city described in IC 4-33-12-6(b)(1)(A); or
- (ii) a city located in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or

(B) to the county that is designated as the home dock of the riverboat from which the tax revenue was collected, in the case of a riverboat whose home dock is not in a city described in clause (A).

(3) Subject to subsection (d), the remainder of the tax revenue remitted by each licensed owner shall be paid to the property tax replacement fund. In each state fiscal year beginning after June 30, 2003, the treasurer of state shall make the transfer required by this subdivision not later than the last business day of the month in which the tax revenue is remitted to the state for deposit in the state gaming fund. However, if tax revenue is received by the state on the last business day in a month, the treasurer of state may transfer the tax revenue to the property tax replacement fund in the immediately following month.

(b) This subsection applies only to tax revenue remitted by an operating agent operating a riverboat in a historic hotel district. After funds are appropriated under section 4 of this chapter, each month the treasurer of state shall distribute the tax revenue deposited in the state gaming fund under this chapter as follows:

(1) Thirty-seven and one half percent (37.5%) shall be paid to the property tax replacement fund established under IC 6-1.1-21.

(2) Thirty-seven and one-half percent (37.5%) shall be paid to the West Baden Springs historic hotel preservation and maintenance fund established by IC 36-7-11.5-11(b). However, at any time the balance in that fund exceeds twenty million dollars (\$20,000,000), the amount described in this subdivision shall be paid to the property tax replacement fund established under IC 6-1.1-21.

(3) Five percent (5%) shall be paid to the historic hotel preservation commission established under IC 36-7-11.5.

(4) Ten percent (10%) shall be paid in equal amounts to each town that:

(A) is located in the county in which the riverboat docks; and

(B) contains a historic hotel.

The town council shall appropriate a part of the money received by the town under this subdivision to the budget of the town's tourism commission.

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(5) Ten percent (10%) shall be paid to the county treasurer of the county in which the riverboat is docked. The county treasurer shall distribute the money received under this subdivision as follows:

(A) Twenty percent (20%) shall be quarterly distributed to the county treasurer of a county having a population of more than thirty-nine thousand six hundred (39,600) but less than forty thousand (40,000) for appropriation by the county fiscal body after receiving a recommendation from the county executive. The county fiscal body for the receiving county shall provide for the distribution of the money received under this clause to one (1) or more taxing units (as defined in IC 6-1.1-1-21) in the county under a formula established by the county fiscal body after receiving a recommendation from the county executive.

(B) Twenty percent (20%) shall be quarterly distributed to the county treasurer of a county having a population of more than ten thousand seven hundred (10,700) but less than twelve thousand (12,000) for appropriation by the county fiscal body after receiving a recommendation from the county executive. The county fiscal body for the receiving county shall provide for the distribution of the money received under this clause to one (1) or more taxing units (as defined in IC 6-1.1-1-21) in the county under a formula established by the county fiscal body after receiving a recommendation from the county executive.

(C) Sixty percent (60%) shall be retained by the county where the riverboat is docked for appropriation by the county fiscal body after receiving a recommendation from the county executive. The county fiscal body shall provide for the distribution of part or all of the money received under this clause to the following under a formula established by the county fiscal body:

(i) A town having a population of more than two thousand two hundred (2,200) but less than three thousand five hundred (3,500) located in a county having a population of more than nineteen thousand three hundred (19,300) but less than twenty thousand (20,000).

(ii) A town having a population of more than three thousand five hundred (3,500) located in a county having a population of more than nineteen thousand three hundred (19,300) but less than twenty thousand (20,000).

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(c) For each city and county receiving money under subsection ~~(a)(2)(A) or (a)(2)(C)~~; **(a)(2)**, the treasurer of state shall determine the total amount of money paid by the treasurer of state to the city or county during the state fiscal year 2002. The amount determined is the base year revenue for the city or county. The treasurer of state shall certify the base year revenue determined under this subsection to the city or county. The total amount of money distributed to a city or county under this section during a state fiscal year may not exceed the entity's base year revenue. For each state fiscal year beginning after June 30, 2002, the treasurer of state shall pay that part of the riverboat wagering taxes that:

- (1) exceeds a particular city or county's base year revenue; and
- (2) would otherwise be due to the city or county under this section;

to the property tax replacement fund instead of to the city or county.

(d) Each state fiscal year the treasurer of state shall transfer from the tax revenue remitted to the property tax replacement fund under subsection (a)(3) to the build Indiana fund an amount that when added to the following may not exceed two hundred fifty million dollars (\$250,000,000):

- (1) Surplus lottery revenues under IC 4-30-17-3.
- (2) Surplus revenue from the charity gaming enforcement fund under IC 4-32-10-6.
- (3) Tax revenue from pari-mutuel wagering under IC 4-31-9-3.

The treasurer of state shall make transfers on a monthly basis as needed to meet the obligations of the build Indiana fund. If in any state fiscal year insufficient money is transferred to the property tax replacement fund under subsection (a)(3) to comply with this subsection, the treasurer of state shall reduce the amount transferred to the build Indiana fund to the amount available in the property tax replacement fund from the transfers under subsection (a)(3) for the state fiscal year.

(e) Before August 15 of 2003 and each year thereafter, the treasurer of state shall distribute the wagering taxes set aside for revenue sharing under subsection (a)(1) to the county treasurer of each county that does not have a riverboat according to the ratio that the county's population bears to the total population of the counties that do not have a riverboat. Except as provided in subsection (h), the county auditor shall distribute the money received by the county under this subsection as follows:

- (1) To each city located in the county according to the ratio the city's population bears to the total population of the county.
- (2) To each town located in the county according to the ratio the

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town's population bears to the total population of the county.

(3) After the distributions required in subdivisions (1) and (2) are made, the remainder shall be retained by the county.

(f) Money received by a city, town, or county under subsection (e) or (h) may be used for any of the following purposes:

(1) To reduce the property tax levy of the city, town, or county for a particular year (a property tax reduction under this subdivision does not reduce the maximum levy of the city, town, or county under IC 6-1.1-18.5);

(2) For deposit in a special fund or allocation fund created under IC 8-22-3.5, IC 36-7-14, IC 36-7-14.5, IC 36-7-15.1, and IC 36-7-30 to provide funding for additional credits for property tax replacement in property tax increment allocation areas or debt repayment.

(3) To fund sewer and water projects, including storm water management projects.

(4) For police and fire pensions.

(5) To carry out any governmental purpose for which the money is appropriated by the fiscal body of the city, town, or county. Money used under this subdivision does not reduce the property tax levy of the city, town, or county for a particular year or reduce the maximum levy of the city, town, or county under IC 6-1.1-18.5.

(g) This subsection does not apply to an entity receiving money under IC 4-33-12-6(c). Before September 15 of 2003 and each year thereafter, the treasurer of state shall determine the total amount of money distributed to an entity under IC 4-33-12-6 during the preceding state fiscal year. If the treasurer of state determines that the total amount of money distributed to an entity under IC 4-33-12-6 during the preceding state fiscal year was less than the entity's base year revenue (as determined under IC 4-33-12-6 **or IC 4-33-12-7**), the treasurer of state shall make a supplemental distribution to the entity from taxes collected under this chapter and deposited into the property tax replacement fund. The amount of the supplemental distribution is equal to the difference between the entity's base year revenue (as determined under IC 4-33-12-6 **or IC 4-33-12-7**) and the total amount of money distributed to the entity during the preceding state fiscal year under IC 4-33-12-6.

(h) This section applies only to a county containing a consolidated city. The county auditor shall distribute the money received by the county under subsection (d) as follows:

(1) To each city, other than a consolidated city, located in the

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county according to the ratio that the city's population bears to the total population of the county.

(2) To each town located in the county according to the ratio that the town's population bears to the total population of the county.

(3) After the distributions required in subdivisions (1) and (2) are made, the remainder shall be paid in equal amounts to the consolidated city and the county."

Page 1, delete lines 15 through 16, begin a new line block indented and insert:

~~"(4) delivery charges;~~

~~(5) installation charges; or"~~

Page 1, line 17, strike "(6)" and insert "(4)".

Page 2, between lines 27 and 28, begin a new line blocked left and insert:

"For purposes of subdivision (6), delivery charges are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing."

Page 4, between lines 1 and 2, begin a new paragraph and insert:

"SECTION 4. IC 6-2.5-4-1, AS AMENDED BY P.L.257-2003, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

(1) acquires tangible personal property for the purpose of resale; and

(2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

(1) the property is transferred in the same form as when it was acquired;

(2) the property is transferred alone or in conjunction with other property or services; or

(3) the property is transferred conditionally or otherwise.

(d) Notwithstanding subsection (b), a person is not selling at retail if he is making a wholesale sale as described in section 2 of this chapter.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

(1) the price of the property transferred, without the rendition of

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any service; and

(2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, ~~delivery~~, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

For purposes of subdivision (2), ~~charges for delivery are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing.~~ **transfer shall take place before delivery of the property to the purchaser.**

(f) Notwithstanding subsection (e):

(1) in the case of retail sales of gasoline (as defined in IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22), the gross retail income received from selling at retail is the total sales price of the gasoline or special fuel minus the part of that price attributable to tax imposed under IC 6-6-1.1, IC 6-6-2.5, or Section 4041(a) or Section 4081 of the Internal Revenue Code; and

(2) in the case of retail sales of cigarettes (as defined in IC 6-7-1-2), the gross retail income received from selling at retail is the total sales price of the cigarettes including the tax imposed under IC 6-7-1.

(g) Gross retail income does not include income that represents charges for serving or delivering food and food ingredients furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion under this subsection only applies if the charges for the serving or delivery are stated separately from the price of the food and food ingredients when the purchaser pays the charges."

Page 11, line 17, delete "Subject to subsection (g), add an amount equal to" and insert "**Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.**".

Page 11, delete lines 18 through 22.

Page 12, line 4, delete "Subject to subsection (g), add an amount equal to" and insert "**Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.**".

Page 12, delete lines 5 through 9.

Page 12, line 33, delete "Subject to subsection (g), add an amount equal to" and insert "**Add an amount equal to any deduction allowed under Section 172 or Section 810 of the Internal Revenue Code.**".

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Page 12, delete lines 34 through 38.

Page 13, line 20, delete "Subject to subsection (g), add an amount equal to" and insert "**Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.**".

Page 13, delete lines 21 through 25.

Page 14, line 2, delete "Subject to subsection (g), add an amount equal to" and insert "**Add an amount equal to any deduction allowed under Section 172 of the Internal Revenue Code.**".

Page 14, delete lines 3 through 7.

Page 14, delete lines 26 through 42, begin a new paragraph and insert:

"SECTION 8. IC 6-3-2-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]:
Sec. 2.5. (a) This section applies to a resident person. ~~for a particular taxable year; if the taxpayer's adjusted gross income for that taxable year is reduced because of a deduction allowed under Section 172 of the Internal Revenue Code for a net operating loss. For purposes of section 1 of this chapter, the taxpayer's adjusted gross income, for the particular taxable year, is the remainder determined under STEP FOUR of the following formula:~~

STEP ONE: ~~Determine the taxpayer's adjusted gross income, for the taxable year, as calculated without the deduction for net operating losses provided by Section 172 of the Internal Revenue Code.~~

STEP TWO: ~~Determine, in the manner prescribed in subsection (b), the amount of the taxpayer's net operating losses that are deductible for the taxable year under Section 172 of the Internal Revenue Code, as adjusted to reflect the modifications required by IC 6-3-1-3.5.~~

STEP THREE: ~~Enter the larger of zero (0) or the amount determined under STEP TWO.~~

STEP FOUR: ~~Subtract the amount entered under STEP THREE from the amount determined under STEP ONE.~~

(b) ~~For purposes of STEP TWO of subsection (a), the modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year during which each net operating loss was incurred. In addition, for purposes of STEP TWO of subsection (a), the following procedures apply:~~

(1) ~~The taxpayer's net operating loss for a particular taxable year shall be treated as a positive number.~~

(2) ~~A modification that is to be added to federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be~~

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treated as a negative number.

(3) A modification that is to be subtracted from federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a positive number.

(b) Resident persons are entitled to a net operating loss deduction. The amount of the deduction taken in a taxable year may not exceed the taxpayer's unused Indiana net operating losses carried back or carried over to that year.

(c) An Indiana net operating loss equals the taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, adjusted for the modifications required by IC 6-3-1-3.5.

(d) The following provisions apply for purposes of subsection (c):

(1) The modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year in which each net operating loss was incurred.

(2) An Indiana net operating loss includes a net operating loss that arises when the modifications required by IC 6-3-1-3.5 exceed the taxpayer's federal taxable income (as defined in Section 62 of the Internal Revenue Code) for the taxable year in which the Indiana net operating loss is determined.

(e) Subject to the limitations contained in subsection (g), an Indiana net operating loss carryback or carryover shall be available as a deduction from the taxpayer's adjusted gross income (as defined in IC 6-3-1-3.5) in the carryback or carryover year provided in subsection (f).

(f) Carrybacks and carryovers shall be determined under this subsection as follows:

(1) An Indiana net operating loss shall be an Indiana net operating loss carryback to each of the carryback years preceding the taxable year of the loss.

(2) An Indiana net operating loss shall be an Indiana net operating loss carryover to each of the carryover years following the taxable year of the loss.

(3) Carryback years shall be determined by reference to the number of years allowed for carrying back a net operating loss under Section 172(b) of the Internal Revenue Code.

(4) Carryover years shall be determined by reference to the number of years allowed for carrying over net operating losses under Section 172(b) of the Internal Revenue Code.

(5) A taxpayer who makes an election under Section 172(b)(3)

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of the Internal Revenue Code to relinquish the carryback period with respect to a net operating loss for any taxable year shall be considered to have also relinquished the carryback of the Indiana net operating loss for purposes of this section.

(g) The entire amount of the Indiana net operating loss for any taxable year shall be carried to the earliest of the taxable years to which (as determined under subsection (f)) the loss may be carried. The amount of the Indiana net operating loss remaining after the deduction is taken under this section in a taxable year may be carried back or carried over as provided in subsection (f). The amount of the Indiana net operating loss carried back or carried over from year to year shall be reduced to the extent that the Indiana net operating loss carryback or carryover is used by the taxpayer to obtain a deduction in a taxable year until the occurrence of the earlier of the following:

- (1) The entire amount of the Indiana net operating loss has been used as a deduction.
- (2) The Indiana net operating loss has been carried over to each of the carryover years provided by subsection (f).

SECTION 9. IC 6-3-2-2.6, AS AMENDED BY P.L.192-2002(ss), SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004 (RETROACTIVE)]: Sec. 2.6. (a) This section applies to a corporation or a nonresident person. for a particular taxable year, if the taxpayer's adjusted gross income for that taxable year is reduced because of a deduction allowed under Section 172 of the Internal Revenue Code for a net operating loss. For purposes of section 1 of this chapter, the taxpayer's adjusted gross income, for the particular taxable year, derived from sources within Indiana is the remainder determined under STEP FOUR of the following formula:

STEP ONE: Determine, in the manner prescribed in section 2 of this chapter, the taxpayer's adjusted gross income, for the taxable year, derived from sources within Indiana, as calculated without the deduction for net operating losses provided by Section 172 of the Internal Revenue Code.

STEP TWO: Determine, in the manner prescribed in subsection (b), the amount of the taxpayer's net operating losses that are deductible for the taxable year under Section 172 of the Internal Revenue Code, as adjusted to reflect the modifications required by IC 6-3-1-3.5, and that are derived from sources within Indiana.

STEP THREE: Enter the larger of zero (0) or the amount determined under STEP TWO.

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STEP FOUR: Subtract the amount entered under **STEP THREE** from the amount determined under **STEP ONE**.

(b) For purposes of **STEP TWO** of subsection (a), the modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same taxable year during which each net operating loss was incurred. In addition, for purposes of **STEP TWO** of subsection (a), the amount of a taxpayer's net operating losses that are derived from sources within Indiana shall be determined in the same manner that the amount of the taxpayer's income derived from sources within Indiana is determined, under section 2 of this chapter, for the same taxable year during which each loss was incurred. Also, for purposes of **STEP TWO** of subsection (a), the following procedures apply:

(1) The taxpayer's net operating loss for a particular taxable year shall be treated as a positive number.

(2) A modification that is to be added to federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a negative number.

(3) A modification that is to be subtracted from federal adjusted gross income or federal taxable income under IC 6-3-1-3.5 shall be treated as a positive number.

(4) A net operating loss under this section shall be considered even though in the year the taxpayer incurred the loss the taxpayer was not subject to the tax imposed under section 1 of this chapter because the taxpayer was:

(A) a life insurance company (as defined in Section 816(a) of the Internal Revenue Code); or

(B) an insurance company subject to tax under Section 831 of the Internal Revenue Code.

(b) Corporations and nonresident persons are entitled to a net operating loss deduction. The amount of the deduction taken in a taxable year may not exceed the taxpayer's unused Indiana net operating losses carried back or carried over to that year.

(c) An Indiana net operating loss equals the taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, derived from sources within Indiana and adjusted for the modifications required by IC 6-3-1-3.5.

(d) The following provisions apply for purposes of subsection (c):

(1) The modifications that are to be applied are those modifications required under IC 6-3-1-3.5 for the same

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taxable year in which each net operating loss was incurred.

(2) The amount of the taxpayer's net operating loss that is derived from sources within Indiana shall be determined in the same manner that the amount of the taxpayer's adjusted income derived from sources within Indiana is determined under section 2 of this chapter for the same taxable year during which each loss was incurred.

(3) An Indiana net operating loss includes a net operating loss that arises when the modifications required by IC 6-3-1-3.5 exceed the taxpayer's federal taxable income (as defined in Section 63 of the Internal Revenue Code), if the taxpayer is a corporation, or when the modifications required by IC 6-3-1-3.5 exceed the taxpayer's federal adjusted gross income (as defined by Section 62 of the Internal Revenue Code), if the taxpayer is a nonresident person, for the taxable year in which the Indiana net operating loss is determined.

(e) Subject to the limitations contained in subsection (g), an Indiana net operating loss carryback or carryover shall be available as a deduction from the taxpayer's adjusted gross income derived from sources within Indiana (as defined in section 2 of this chapter) in the carryback or carryover year provided in subsection (f).

(f) Carrybacks and carryovers shall be determined under this subsection as follows:

(1) An Indiana net operating loss shall be an Indiana net operating loss carryback to each of the carryback years preceding the taxable year of the loss.

(2) An Indiana net operating loss shall be an Indiana net operating loss carryover to each of the carryover years following the taxable year of the loss.

(3) Carryback years shall be determined by reference to the number of years allowed for carrying back a net operating loss under Section 172(b) of the Internal Revenue Code.

(4) Carryover years shall be determined by reference to the number of years allowed for carrying over net operating losses under Section 172(b) of the Internal Revenue Code.

(5) A taxpayer who makes an election under Section 172(b)(3) of the Internal Revenue Code to relinquish the carryback period with respect to a net operating loss for any taxable year shall be considered to have also relinquished the carryback of the Indiana net operating loss for purposes of this section.

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(g) The entire amount of the Indiana net operating loss for any taxable year shall be carried to the earliest of the taxable years to which (as determined under subsection (f)) the loss may be carried. The amount of the Indiana net operating loss remaining after the deduction is taken under this section in a taxable year may be carried back or carried over as provided in subsection (f). The amount of the Indiana net operating loss carried back or carried over from year to year shall be reduced to the extent that the Indiana net operating loss carryback or carryover is used by the taxpayer to obtain a deduction in a taxable year until the occurrence of the earlier of the following:

- (1) The entire amount of the Indiana net operating loss has been used as a deduction.
- (2) The Indiana net operating loss has been carried over to each of the carryover years provided by subsection (f).

(h) An Indiana net operating loss deduction determined under this section shall be allowed notwithstanding the fact that in the year the taxpayer incurred the net operating loss the taxpayer was not subject to the tax imposed under section 1 of this chapter because the taxpayer was:

- (1) a life insurance company (as defined in Section 816(a) of the Internal Revenue Code); or
- (2) an insurance company subject to tax under Section 831 of the Internal Revenue Code.

(i) In the case of a life insurance company that claims an operations loss deduction under Section 810 of the Internal Revenue Code, this section shall be applied by:

- (1) substituting the corresponding provisions of Section 810 of the Internal Revenue Code in place of references to Section 172 of the Internal Revenue; and
- (2) substituting life insurance company taxable income (as defined in Section 801 the Internal Revenue Code) in place of references to taxable income (as defined in Section 63 of the Internal Revenue Code).

(j) For purposes of an amended return filed to carry back an Indiana net operating loss:

- (1) the term "due date of the return" as used in IC 6-8.1-9-1(a)(1) means the due date of the return for the taxable year in which the net operating loss was incurred; and
- (2) the term "date the payment was due" as used in IC 6-8.1-9-2(c) means the due date of the return for the taxable year in which the net operating loss was incurred."

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Delete pages 15 through 25.

Page 26, delete lines 1 through 21.

Page 26, delete lines 39 through 42.

Delete pages 27 through 31.

Page 32, delete line 1.

Page 34, delete lines 32 through 37.

Page 34, delete line 42.

Page 35, delete lines 1 through 8.

Page 35, line 33, delete "The following provisions" and insert "**IC 6-3-1-3.5, IC 6-3-2-2.5, and IC 6-3-2-2.6, all as amended by this act,**".

Page 35, line 34, delete ":" and insert ".".

Page 35, delete lines 35 through 36, begin a new paragraph and insert:

"(f) The following provisions apply to deductions for net operating losses that are claimed after December 31, 2003:

(1) Deductions for net operating losses that are incurred in taxable years beginning after December 31, 2003, and are carried back or carried forward and deducted in taxable years ending before January 1, 2004, must be calculated under IC 6-3-2-2.5 and IC 6-3-2-2.6, both as amended by this act.

(2) Deductions for net operating losses that were incurred in taxable years ending before January 1, 2004, and that are carried forward and deducted in taxable years ending after December 31, 2003, must be calculated under IC 6-3-2-2.5 and IC 6-3-2-2.6, both as amended by this act.

(3) Deductions for net operating losses that were incurred in taxable years ending before January 1, 2004, and are carried back or carried forward and deducted in taxable years ending before January 1, 2004, must be calculated under the versions of IC 6-3-2-2.5 and IC 6-3-2-2.6 that were in effect in the year the net operating loss was incurred.

(4) Regardless of the applicable method of calculation in the year in which the net operating loss is deducted, any net operating loss available for carry forward shall be reduced by the amount of the net operating loss previously deducted in an earlier taxable year."

Page 35, line 37, delete "(f)" and insert "(g)".

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Renumber all SECTIONS consecutively.
and when so amended that said bill do pass.

(Reference is to HB 1365 as reprinted February 6, 2004.)

BORST, Chairperson

Committee Vote: Yeas 8, Nays 7.

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SENATE MOTION

Madam President: I move that Engrossed House Bill 1365 be amended to read as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 13.

Page 14, delete lines 1 through 25.

Renumber all SECTIONS consecutively.

(Reference is to EHB 1365 as printed February 20, 2004.)

MILLER

SENATE MOTION

Madam President: I move that Engrossed House Bill 1365 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning taxation, agriculture and animals.

Page 14, between lines 25 and 26, begin a new paragraph and insert:

"SECTION 4. IC 6-1.1-6.9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005]:

Chapter 6.9. Assessment of Classified Farmland

Sec. 1. As used in this chapter, "farmland" refers to land classified in the farmland protection program under IC 15-7-10.

Sec. 2. As used in this chapter, "recapture period" means the lesser of:

- (1) the period of classification of land as farmland; or**
- (2) the ten (10) year period immediately preceding the date on which land is withdrawn from the farmland classification.**

Sec. 3. As used in this chapter, "taxpayer" refers to the owner of farmland.

Sec. 4. For each assessment date during the period of the classification of land as farmland:

- (1) the land shall be assessed using the lesser of:**
 - (A) the assessed value finally determined for the current year's assessment date; or**
 - (B) the assessed value finally determined for the assessment date that next succeeds the date of the farmland classification under IC 15-7-10;**



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- (2) assessing officials shall keep a record of the assessed value that would apply if the land were not classified as farmland;
- (3) ditch assessments on the farmland shall be paid; and
- (4) oil, gas, stone, coal, or other mineral wealth obtained from the farmland shall be assessed and placed on the tax duplicate.

Sec. 5. The taxpayer shall record the approved application for farmland classification under IC 15-7-10 in the county recorder's office. After an approved application is properly recorded, the county auditor shall enter the farmland for taxation at the assessed value determined under section 4(1) of this chapter.

Sec. 6. If farmland is withdrawn from the farmland classification:

- (1) the Indiana land resources council established by IC 15-7-9-4 shall immediately notify the assessor, auditor, and recorder of the county in which the farmland is located that the farmland has been withdrawn; and
- (2) the taxpayer shall make a notation of the withdrawal in the records of the county recorder.

Sec. 7. (a) If farmland is withdrawn, other than under IC 15-7-10-11, from the farmland classification, the taxpayer shall pay to the county treasurer an amount equal to the sum of:

- (1) the remainder of:
 - (A) the total property taxes that, if it were not for the farmland classification, would have been assessed to the land during the recapture period; minus
 - (B) the total property taxes assessed to the farmland during the recapture period that were paid; plus
- (2) interest on the property taxes determined under subdivision (1) at the rate of ten percent (10%) per year.

(b) Property taxes shall be determined under subsection (a)(1) using:

- (1) the assessed value of the land as recorded under section 4(2) of this chapter; and
- (2) the net tax rate for the taxing district in which the farmland is located;

for each year for which the property taxes are determined.

(c) The liability imposed by this section is a lien on the land withdrawn from the farmland classification. The county treasurer shall deposit collections under this section in the farmland protection program account established by IC 15-7-10-12. If the liability is not satisfied, the lien is treated in the same manner that delinquent taxes on real property are treated.

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Sec. 8. A conveyance of farmland does not release a person acquiring an interest in the land from an obligation or liability imposed under this chapter."

Page 37, between lines 10 and 11, begin a new paragraph and insert:

"SECTION 18. IC 15-7-10 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 10. Farmland Protection Program

Sec. 1. As used in this chapter, "assistant commissioner" refers to the assistant commissioner of agriculture appointed under IC 4-4-22-20.

Sec. 2. As used in this chapter, "council" refers to the Indiana land resources council established by IC 15-7-9-4.

Sec. 3. As used in this chapter, "designated area" refers to an area of land set aside under section 8(c) of this chapter in a county within which land may be designated as farmland eligible for the program.

Sec. 4. As used in this chapter, "farmland" includes the following:

- (1) Acreage used for the production of:**
 - (A) food;**
 - (B) feed;**
 - (C) forage;**
 - (D) fibre; and**
 - (E) oilseed crops.**
- (2) Acreage used to raise:**
 - (A) livestock;**
 - (B) dairy animals;**
 - (C) dairy products;**
 - (D) poultry;**
 - (E) poultry products; and**
 - (F) furbearing animals.**
- (3) Acreage used to:**
 - (A) grow horticultural and nursery stock;**
 - (B) grow fruits;**
 - (C) grow vegetables;**
 - (D) grow forage;**
 - (E) grow timber;**
 - (F) grow trees;**
 - (G) raise fish and other aquaculture products;**
 - (H) raise bees and apiary products; and**
 - (I) grow other crops used for agricultural income.**

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(4) Areas including;

- (A) buildings;**
- (B) land modifications;**
- (C) wetlands;**
- (D) pasture;**
- (E) forest land;**
- (F) wildlife land;**
- (G) riparian areas;**
- (H) buffers; and**
- (I) other areas;**

that enhance or depend on the inherent productivity of the land.

Sec. 5. As used in this chapter, "livestock" has the meaning set forth in IC 4-4-3.2-1(b).

Sec. 6. As used in this chapter, "program" refers to the farmland protection program established by section 7 of this chapter.

Sec. 7. The farmland protection program is established to provide a voluntary tool to Indiana landowners to protect and conserve rural lands, including the following:

- (1) Farmland.**
- (2) Other rural natural areas as defined by the council.**

Sec. 8. (a) The council shall administer the program. The council shall work with local agencies and organizations to establish a cooperative relationship in land use practices and policies. The council, after consulting with local agencies and organizations, shall develop specific program guidelines and policies to administer the program. The program must be compatible with the federal Farm and Ranch Land Protection Program (7 CFR 1491).

(b) The council may adopt rules under IC 4-22-2 to implement the program.

(c) The council, working with local agencies and organizations, shall establish criteria for designated areas of land on a county by county basis. Only land within a designated area is eligible for the program. Before establishing an area as a designated area, the council shall hold a hearing in the county in which the land is located. The council shall follow the procedures for public hearings under IC 5-14-1.5-5. The council shall obtain the approval of the local zoning authority having jurisdiction over the designated area, or, if the designated area does not lie within the jurisdiction of any local zoning authority, the county commissioners of the county in which the designated area is located, before designating an area as

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a designated area for purposes of this chapter.

(d) The council shall establish criteria for evaluating applications for the program, including the following:

(1) Land must have been in an agriculture production or conservation program at the time of application and for five (5) years before the application.

(2) Land must be in a designated area.

(3) Land in:

(A) a locally recognized agricultural district;

(B) an agricultural protection zone;

(C) an agricultural security area; or

(D) any effective local agricultural protection initiative;

shall be given higher consideration.

(4) At least thirty-five (35) acres of working land must be located within an agricultural area, with not more than one (1) residence on a single or combined tract to meet acreage requirements with either single or multiple owners.

(5) Larger tracts must be given priority.

(6) A scoring system similar to the federal Farm and Ranch Land Protection Program (7 CFR 1491) shall be developed. There shall be a minimum score requirement to qualify for the program, including standards on:

(A) soil erosion;

(B) conservation plans with the federal Natural Resources Conservation Service's quality criteria;

(C) landowner participation; and

(D) management plans.

(e) A consistent lack of compliance with environmental permits and requirements shall disqualify a landowner from the program.

(f) Applications must be received by the council by January 1 of each year, beginning January 1, 2005. Contracts must be entered into by March 1 of each year, beginning March 1, 2005.

(g) The council may reject an application for the program if the council finds that the parcel proposed for protection was divided from a larger parcel in a transaction intended to defeat the purposes of the program.

Sec. 9. (a) A landowner may enroll in the program by entering into a contract with the council for a period of ten (10) years, with an unlimited number of automatic renewal periods of five (5) years each. A landowner may give notice to the state of the landowner's intention to terminate the contract at the end of the contract period. If a landowner is going to terminate the contract, the

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landowner must give six (6) months advance notice before the expiration date of the contract.

(b) Contract conditions run with the land and must be recorded.

(c) During the term of the contract, one (1) residential building lot may be split from the root parcel (which includes all contiguous property under substantially common ownership at the time of enrollment in the program) if the residential building lot is used for the residence of an individual who is farming the land.

(d) A split may not be made from the root parcel for manufacturing, industrial, or commercial lots unless the split is in keeping with the purpose, principles, and objectives of the program.

Sec. 10. When a county government, local planning commission, or other local entity engaged in planning for a local community has developed standards for the preservation of farmland, the council shall consider the standards when evaluating applications.

Sec. 11. (a) A landowner may withdraw from the program when proposing to enroll in an alternate land protection program of equal or greater time period and conditions.

(b) An early withdrawal, except under subsection (a), from the contract shall result in the loss of and pay back of any incentive received from the program.

(c) Any violation of the contract shall disqualify the farmland or the landowner from enrolling in the program for ten (10) years after the time of confirmation of the violation.

Sec. 12. (a) The farmland protection program account is established within the state general fund for the purpose of providing money to match federal funds under 7 CFR 1491 to be used for the protection of farmland in Indiana. The account shall be administered by the council.

(b) The account consists of:

- (1) money collected under IC 6-1.1-6.9-7;
- (2) gifts and bequests; and
- (3) grants.

(c) The expenses of administering the account shall be paid from money in the account.

(d) The treasurer of state shall invest the money in the account not currently needed to meet the obligations of the account in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the account.

(e) Money in the account at the end of a state fiscal year does not revert to the state general fund.

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(f) Money in the account may be spent only after appropriation by the general assembly.

Sec. 13. Owners of land in the program shall be given priority for state grants or technical assistance given by the commissioner of agriculture or the department of commerce.

SECTION 19. IC 32-24-1-5.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 5.4. (a) For purposes of this section, "protected farmland" means land that is:**

- (1) included in an area designated as protected by the Indiana land resources council under IC 15-7-10-8(c); and
- (2) covered under a contract between the Indiana land resources council and the landowner under IC 15-7-10-9.

(b) If land being condemned under this article is designated as protected farmland under a contract entered into under IC 15-7-10-9, the damages offered by the condemnor shall be two hundred percent (200%) of:

- (1) the fair market value offered under section 5 of this chapter; or
- (2) the award made by a court under this article.

(c) This section does not apply to land that is being condemned for:

- (1) a highway;
- (2) a road;
- (3) a street; or
- (4) a right-of-way under IC 32-24-4-1."

Page 38, between lines 30 and 31, begin a new paragraph and insert: "SECTION 24. [EFFECTIVE JANUARY 1, 2005] IC 6-1.1-6.9, as added by this act, applies only to property taxes first due and payable after December 31, 2005."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1365 as printed February 20, 2004.)

JACKMAN

SENATE MOTION

Madam President: I move that Engrossed House Bill 1365 be amended to read as follows:

Page 34, delete lines 11 through 27.

Page 38, delete lines 29 through 30.

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Renumber all SECTIONS consecutively.

(Reference is to EHB 1365 as printed February 20, 2004.)

FORD

SENATE MOTION

Madam President: I move that Engrossed House Bill 1365 be amended to read as follows:

Page 34, delete lines 28 through 42.

Delete page 35.

Page 36, delete lines 1 through 38.

Page 37, delete lines 11 through 15.

Renumber all SECTIONS consecutively.

(Reference is to EHB 1365 as printed February 20, 2004.)

KENLEY

SENATE MOTION

Madam President: I move that Engrossed House Bill 1365 be amended to read as follows:

Page 37, between lines 15 and 16, begin a new paragraph and insert:

"SECTION 18. THE FOLLOWING ARE REPEALED [EFFECTIVE APRIL 1, 2004]: IC 6-2.5-4-4.5; IC 6-2.5-6-15."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1365 as printed February 20, 2004.)

MERRITT

SENATE MOTION

Madam President: I move that Engrossed House Bill 1365 be amended to read as follows:

Page 34, between lines 10 and 11, begin a new paragraph and insert:

"SECTION 14. IC 6-3.1-4-6, AS AMENDED BY P.L.224-2003, SECTION 191, IS AMENDED TO READ AS FOLLOWS

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[EFFECTIVE JULY 1, 2004]: Sec. 6. ~~Notwithstanding the other provisions of this chapter, a taxpayer is not entitled to a credit for Indiana qualified research expense incurred after December 31, 2013.~~ Notwithstanding Section 41 of the Internal Revenue Code, the termination date in Section 41(h) of the Internal Revenue Code does not apply to a taxpayer who is eligible for the credit under this chapter for the taxable year in which the Indiana qualified research expense is incurred."

Renumber all SECTIONS consecutively.

(Reference is to EHB 1365 as printed February 20, 2004.)

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